

6497. b. 33.

T R I A L
OF
MR. PETER FINERTY,
LATE PRINTER OF THE PRESS,
FOR A LIBEL
AGAINST HIS
EXCELLENCY EARL CAMDEN,
LORD LIEUTENANT OF IRELAND,
In a Letter signed MARCUS,
IN THAT PAPER.

D U B L I N:

PRINTED BY J. STOCKDALE, NO. 62, ABBEY-STREET.

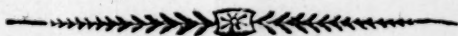
1798.

PRICE 1s. 1d.



COMMISSION
OF
OYER AND TERMINER,
AND
GENERAL GAOL DELIVERY,

Held in and for the COUNTY of the CITY of DUBLIN,
before the Hon. JUSTICE DOWNES.



Friday, 22d December, 1797.

MR. PETER FINERTY being put to the Bar, the pannel of the petty Jury, was called, there appeared above one hundred and forty names on it. The following Jury was then sworn, after the Crown had set aside *Mr. Henry Lyons*, and *Mr. George Saul*; and Messrs. *Robert Law*, *John Conroy*, and *John Ferange* had objected to themselves, as having been on the Grand Jury that found the bill against *Mr. Finerty*.

*James Blacker,
Ben. Richardson,
John Dickinson,
Wm. Dickinson,
Wm. Taylor,
Michael Nixon,*

*James Atkinson,
Wm. Cowan,
Bladen Sweeny,
Mark Bloxam,
Wm. Williams,
James King,*

The Clerk of the Crown then gave *Mr. Finerty* in charge to the Jury upon an indictment stating, " That at a General Assizes and general gaol delivery holden at Carrickfergus, in and for the county of Antrim on 17th April, 37th King, before the Honorable Mathias Finucane one of the Judges of his majesty's court of common pleas in Ireland, and the Hon. Denis George one of the Barons of his majesty's Court of Exchequer in Ireland, Justices and Commissioners assigned to deliver the Gaol of our said Lord the King in and for the county of Antrim of the several prisoners and malefactors therein, one William Orr, late

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of

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of Farranfhane, in faid county Antrim, yeoman, was in lawful manner indicted for feloniously adminiftering a certain oath and engagement, upon a book, to one Hugh Wheatly; which oath and engagement imported to bind the faid Hugh Wheatly, who then and there took the same, to be of an affociation, brotherhood, and fociety, formed for feditious purpofes; and alfo for feloniously caufing, procuring, and inducing faid Hugh Wheatly to take an oath of faid import laft mentioned; and alfo for feloniously adminiftering to faid Hugh Wheatly another oath, importing to bind faid Hugh Wheatly, not to inform or give evidence againft any brother, affociate or confederate of a certain fociety then and there formed; and alfo for feloniously caufing, procuring and feducing faid Hugh Wheatly to take an oath of faid import laft mentioned. And afterwards at Carrickfergus aforefaid, before the Right Hon. Barry Lord Yelverton, Lord Chief Baron of his Majefty's Court of Exchequer in Ireland, and the Hon. Tankerville Chamberlaine, one of his Majefty's Juftices of his Court of Chief Place in Ireland, at a general affizes, &c. holden at Carrickfergus aforefaid, in county Antrim aforefaid; Juftices and Commissioners of our faid Lord the King, affigned to take all the affizes, juries, recognitions, and certificates, before whatfoever juftices held or taken; and alfo affigned to hear, examine, difcufs, and determine of all and fingular treafons, murders, manflaughter, burnings, unlawful affemblies, felonies, robberies, extortions, oppreffions, tranfgreffions, crimes, contempts, offences, evil doings, and caufes whatfoever committed within the faid county of Antrim; and to deliver the gaol of our faid Lord the King, in and for the faid county of Antrim. On the 16th day of September, in the 37th King, faid William Orr, by the verdict of a certain jury of faid county of Antrim, between our faid Lord the King and faid William Orr, taken of and for the felony aforefaid in due manner, was tried, convicted, and attainted, and for the fame was duly executed; and that he, well knowing the premifes, but being a wicked and ill difpofed perfon, and of unquiet converfation, and difpofition, and devifing, and intending to moleft and difturb the peace and public tranquillity of this kingdom of Ireland; and to bring and draw the trial aforefaid, and the verdict thereon, for our faid Lord the King, againft this William Orr given, and the due courfe of law in that behalf had, as aforefaid, into hatred, contempt, and fcandal with all the liege fubjects of our faid Lord the King; and to perfuade, and caufe the fubjects of our faid Lord the King to believe, that the trial aforefaid was unduly had, and that the faid William Orr did undeservedly die in manner aforefaid; and that

that his Excellency John Jeffrys, Earl Camden, the Lord Lieutenant of this kingdom, after the conviction aforesaid, ought to have extended to the said William Orr his Majesty's gracious pardon of the felonies aforesaid; and that in not so extending such pardon, he, said Lord Lieutenant, had acted inhumanly, wickedly, and unjustly, and in a manner unworthy of the trust which had been committed to him by our said Lord the King in that behalf; and that the said Lord Lieutenant, in his government of this kingdom, had acted unjustly, cruelly, and oppressively to his Majesty's subjects therein. And to fulfil and bring to effect his most wicked and detestable devices and intentions aforesaid, on 26th October, 37th King, at Mountrath-street aforesaid, city of Dublin aforesaid, falsely, wickedly, maliciously, and seditiously, did print and publish, and cause and procure to be printed and published, in a certain newspaper "entitled the Press," a certain false, wicked, malicious, and seditious libel, of and concerning the said trial, conviction, attainder and execution of the said William Orr as aforesaid, and of and concerning the said Lord Lieutenant and his government of this kingdom, and his Majesty's Ministers employed by him in his government of this kingdom, according to the tenor and effect following, to wit.

"The death of Mr. Orr (meaning the said execution of the said William Orr) the nation has pronounced one of the most sanguinary and savage acts that had disgraced the laws. In perjury, did you not hear, my Lord, (meaning the said Lord Lieutenant) the verdict (meaning the verdict aforesaid) was given? Perjury accompanied with terror, as terror has marked every step of your government (meaning the government of this kingdom aforesaid, by the said Lord Lieutenant). Vengeance and desolation were to fall on those who would not plunge themselves in blood. These were not strong enough: Against the express law of the land, not only was drink introduced to the jury (meaning the jury aforesaid), but drunkenness itself, beastly and criminal drunkenness, was employed to procure the murder of a better man (meaning the said execution of the said William Orr) than any that now surrounds you (meaning the said Lord Lieutenant.) And in another part thereof, according to the tenor and effect following; to wit. "Repentance, which is a slow virtue, hastened however to declare the innocence of the victim, (meaning the said William Orr) the mischief (meaning the said conviction of the said William Orr) which perjury had done, truth now steps forward to repair. Neither was she too late, had humanity formed any part of your counsels, (meaning the counsels of the said Lord Lieutenant).

"nant.) Stung with remorse, on the return of reason, part of
 "his jury (meaning the jury aforesaid) solemnly and soberly
 "made oath, that their verdict (meaning the verdict aforesaid)
 "had been given under the unhappy influence of intimidation and drink ; and in the most serious affidavit that ever
 "was made, by acknowledging their crime, endeavoured to
 "atone to God and to their country, for the sin into which
 "they had been seduced." And in another part thereof, according to the tenor and effect following, to wit. "And though
 "the innocence of the accused (meaning the said William Orr) had even remained doubtful, it was your duty (meaning the duty of the said Lord Lieutenant) my Lord, and you
 "(meaning the said Lord Lieutenant) had no exemption from
 "that duty, to have interposed your arm, and saved him (meaning the said William Orr) from the death (meaning the execution aforesaid) that perjury, drunkenness, and reward
 "had prepared for him (meaning the said William Orr). Let
 "not the nation be told that you (meaning the said Lord Lieutenant) are a passive instrument in the hands of others ;
 "if passive you be, then is your office a shadow indeed. If
 "an active instrument, as you ought to be, you (meaning the said Lord Lieutenant) did not perform the duty which the
 "laws required of you ; you (meaning the said Lord Lieutenant,) did not exercise the prerogative of mercy ; that mercy which the constitution had entrusted to you (meaning the said Lord Lieutenant) for the safety of the subject, by
 "guarding him from the oppression of wicked men. Innocent it appears he (meaning the said William Orr) was,
 "his blood (meaning the blood of the said William Orr) has
 "been shed, and the precedent indeed is awful." And in another part thereof, according to the tenor and effect following, to wit. "But suppose the evidence of Wheatly had been
 "true, what was the offence of Mr. Orr (meaning the said William Orr) ? Not that he had taken an oath of blood and
 "extermination—for then he had not suffered ; but that he
 "(meaning the said William Orr) had taken an oath of charity and of union, of humanity and of peace, he (meaning the said William Orr) has suffered. Shall we then be told
 "that your government (meaning the government of this kingdom aforesaid, by the said Lord Lieutenant) will conciliate public opinion, or that the people will not continue
 "to look for a better." And in another part thereof, according to the tenor and effect following, that is to say, "Is it to
 "be wondered that a successor of Lord Fitzwilliam should
 "sign the death-warrant of Mr. Orr (meaning the said William Orr). Mr. Pitt had learned that a merciful Lord Lieutenant was unsuited to a government of violence. It was
 "no

“ no compliment to the native clemency of a Camden ; that
 “ he sent you (meaning the said Lord Lieutenant) into Ireland
 “ —and what has been our portion under the change, but
 “ massacre and rape, military murders, desolation and ter-
 “ ror.” And in another part thereof, according to the tenor
 and effect here following, that is to say, “ Feasting in your
 “ Castle in the midst of your myrmidons and bishops, you
 “ (meaning the said Lord Lieutenant) have little concerned
 “ yourself about the expelled and miserable cottager, whose
 “ dwelling, at the moment of your mirth, was in flames, his
 “ wife and his daughter then under the violation of some com-
 “ missioned ravager, his son agonizing on the bayonet, and
 “ his helpless infants crying in vain for mercy. These are
 “ lamentations that stain not the house of carousal. Under
 “ intoxicated counsels (meaning the counsels of the said
 “ Lord Lieutenant) the constitution has reeled to its centre,
 “ justice herself is not only blind drunk but deaf, like Festus to
 “ the words of sobriety and truth,” and in another part
 thereof according to the tenor and effect here following to wit,
 “ Let however the awful execution of Mr. Orr (meaning the
 “ execution aforesaid of the said William Orr) be a lesson to
 “ all unthinking juries, and let them cease to flatter themselves
 “ that the soberest recommendation of theirs, and of the pre-
 “ siding judge can stop the course of carnage which sanguinary
 “ and I do not fear to say unconstitutional laws have ordered to
 “ be loosed. Let them remember that like Macbeth, the ser-
 “ vants of the Crown have waded so far in blood that they find
 “ it easier to go on than to go back, In contempt &c. and
 “ against peace.”

There were other Counts charging the publication in different ways.

Mr. *Townsend* opened the indictment on the part of the prosecution, and in an unusual manner, never before done, stated to the Jury the whole of the publication as charged against Mr. *Finaerty*.

Mr. *Attorney General* stated the case. He said he had been directed by the executive power, to prosecute the Traverser at the bar for printing and publishing, and causing to be printed and published, a false, scandalous, malicious and seditious libel. The grand jury of the city of Dublin had found the bill of indictment, and to that bill the traverser has pleaded not guilty, and it is your duty gentlemen of the jury, upon the evidence that shall be laid before you this day, and the evidence arising from the libel itself, taking the whole together to determine two questions ; one a question of fact, whether the traverser at the bar, be guilty of publishing that paper
called

called a malicious and seditious libel. And the second question gentlemen which you have to decide is, whether the libelous paper itself be a seditious libel or not. That gentlemen you will consider upon a careful perusal and examination of the paper. But previous to that examination you are to hear from the learned Judge who presides in this court, his opinion upon this paper whether it be a libel or not. And gentlemen of the Jury I must beg leave to say, that no Jury at least in modern times, have ever been assembled upon an occasion of more importance to the government of the country, than that which now is before you for your consideration. Gentlemen, I am now speaking generally, I shall afterwards go to particulars. It is a libel upon the administration of the justice of the country, a libel that renders the Judges in the administration of justice contemptible and odious in the eyes of the people, a libel having such a tendency is the greatest danger that can be brought on a state. The necessary consequences which were intended to be produced, and for which this libel has been published, a purpose that must tend to the total destruction of government and social order in the state. When respect for the administration of justice in a country is gone, every thing is lost, our lives, our properties are in danger. The traverser at the bar is charged with having on the 26th of October last printed and published in the city of Dublin a Newspaper entitled the "PRESS". It would little become me gentlemen of the Jury to state to you facts not immediately pertaining to the case before you; still less if I was capable of stating any thing to you in a case of such vast magnitude as could affect your passions. However some thing prefatory I must say of this paper, of which it will appear that the man at the bar is the sole proprietor and printer.

The paper gentlemen was published for the first time on the 17th of September in the present year. The law makes it necessary in order to preserve the freedom of the Press, to preserve it, by restraining its licentiousness; the law has made it necessary, that the man who publishes a newspaper shall make an affidavit that he is the sole publisher of that paper and no other; and of every day's publication a copy shall be delivered at the Stamp Office, signed by him who is the proprietor and by that means leaves him responsible to any person whom he shall publish against.

On the 17th of September the traverser made an affidavit pursuant to the statute, by which he swore that he was the sole proprietor and publisher of that newspaper called the "PRESS", and the law requires that the man who shall so publish such paper, whenever any alteration shall be made

made in the property and right of publication, a new affidavit of that fact shall be made. I have stated that on the 17th of September the traverser made an affidavit stating that he was the sole proprietor, and publisher of that paper, and from that day to the present no other affidavit has been made, and therefore gentlemen by the affidavit already made by the traverser at the bar; *Peter Finerty* appears to be the sole proprietor and printer of that paper called the "*Press*."

Gentlemen this paper appears to be of such a nature as to draw upon it the attention of a government deserving any respect, and of every man in the state who had any regard to his life, liberty, or property, and the happy constitution under which he is governed. I will not go into the general systematic tendency of the paper. I will make an observation or two on it, merely as to the head of the prosecution now under your consideration. No man who has read that paper, that shall deliberate on the series of papers that have been published in the "*PRESS*" but must say it was calculated to run down the administration of justice in this country; a systematic determination to disgrace the justice of the country in the eyes of the people; to make the lower orders of people who are ever and anon clamorous, to rise against the state, and to make them believe that justice and law are curbed in the administration of them, and that they cannot have impartial justice done to them.

I am at liberty to say it does disclose such a system, and the part you are called on to determine is only a part of that system. I will presently state the different parts of the libel, but before I do it, let me observe to you, that in the discharge of that sacred trust which is now reposed in you, you are to defend the liberty of the Press. You will defend that liberty which will preserve the freedom of life and of property. It is the abuse of the freedom of the Press, that calls on you to defend its liberty. The liberty of the Press, gentlemen, can never be destroyed, but by its licentiousness.

The indictment in this case does state some matters of fact, which, the better to enable you to understand, I will read to you.

Mr, Attorney General then read the opening of the indictment, where it is stated, "that at a general gaol delivery, held at *Carrickfergus*, on the 17th April, &c." He then observed to the Jury, this part of the indictment gentlemen is worth attending to, because it will shew that there was a perversion of truth in order to deceive the people. The indictment then goes on and states that *Peter Finerty* had as a further object to deceive the people by this seditious libel, wished to insinuate that *William*
Orr

Orr ought not to have been convicted, and that he ought to have received his Majesty's pardon, and further to cause it to be believed, that the Lord Lieutenant had acted inhumanly, unjustly, and unworthily the situation he holds, in not having extended to *Orr* his Majesty's royal clemency. And then, gentlemen, the indictment goes on, and states those parts of the libel which are particularly relied on, and you will have, after the evidence is given, an opportunity of viewing the whole libel. The indictment states only particular parts; but in the consideration of the question, it will be your duty to compare it, and see if the whole of the publication has for its object, that which the indictment charges it to be.

The paper was published on the 26th of October, 1797, of and concerning the trial, attain, and execution of *William Orr*, and of and concerning the Lord Lieutenant, and Ministers employed by the King in the government of this kingdom. I forbear to state any of those circumstances that attended the trial of *Mr. Orr*, because I do not conceive them to be at all necessary to be shewn in the present question. You will see, gentlemen, from the libel itself, with what view the publication was made; and it is not for me to state what passed on the trial of that unfortunate man, whose name I would not mention, if it was not made necessary from the nature of the case.

Gentlemen, the libel imports to be a letter written to the Lord Lieutenant soon after the execution of *Mr. Orr*.

Mr. Attorney General read the first paragraph stated in the indictment. Gentlemen, is it possible to conceive any good motive that could have induced the publication of that. It is not peculiar to any question to be discussed, not expressed in any terms, but such as must excite the people to resentment against the government. If, gentlemen, the ingenuity of the counsel for the traverser can, by the force of imagination put a sense on it, other than the sense of exciting the resentment of the people, let it have full force; but for my understanding, and on the best deliberation, I am not able to find what distinction can be given to this sentence, or that it can mean any thing but a general charge against the administration of justice. A charge against that government, to whom his Majesty has committed the care of his subjects, in this kingdom; a charge that would disgrace the basest of the base that now hear me; that the Lord Lieutenant and the King's Ministers, in order to obtain a sanguinary execution of a man, contrived to have drink introduced into the jury box, and had a man put to death under colour of law!

Mr.

Mr. Attorney General read the several paragraphs, which followed the above one, and observed upon them all.

You find, gentlemen, that the Lord Lieutenant is charged with having withheld the royal mercy, of suffering a man to be executed, after it had appeared to his Lordship from sufferer the most solemn that had ever been made, that the affidavits was innocent.

Gentlemen, mercy is in the discretion of the crown, it must be exercised by the King, or those Ministers to whom the executive government is entrusted. The exercise of it is on due deliberation, and a clear examination of the propriety of extending it. For what purpose did the writer of this libel introduce this paragraph, but to hazard the peace of the country? A libeller daring to assert, in the face of the world, that a man whose case was deliberated on, and who had frequent reprieves from execution, that the verdict against that man, was obtained by introducing drink into the jury room, to charge that a verdict, had been obtained by reward; can any man in this court dare to think such a charge not libellous? I believe in this, or in Great Britain, since the happy period of the revolution, no man has dared to insist, or even to think that a verdict in a criminal case, has been obtained by reward and drunkenness; and I do believe in my soul, that he that penned that libel, let him be in what situation of life he may, when he wrote that part, his soul told him he was writing what was false. If it became me, to make an appeal, I would appeal to those who were present at the trial, to his friends that surrounded him, and I would ask them, if there was among them there, a man who believed that that verdict was obtained by reward or fraud. If that is not a libel upon the administration of justice in this kingdom, I know not what it is; and if it is not found to be so, let the scales fall from the hand of justice, and yield up all you have to destruction. If a jury of the country can find that this is not a libel, let all men that wish to be happy, dispose of their properties, and seek protection for their character and their industry, in some other country, blessed with a more happy constitution.

Here is a libel of new species. First, the world is told that he was not guilty of the offence charged upon him, and that he ought not to have suffered; but then say they, suppose all that has been sworn was true, they then tell the people he suffered for taking an oath of charity, insisting that that brotherhood, to which this case is so nearly related, is a brotherhood of charity, instituted for the benefit of mankind.

C

Gentlemen,

Gentlemen, you will observe that the crime is for taking an oath to be of a society formed for seditious purposes; and, gentlemen, the libeller, the author of the libel, tells the people that he suffered death, not for the crime with which he knew he was charged, but for having taken an oath of charity to men!

Gentlemen of the Jury, you must see a direct attack upon the Administration of the country, attend to the latter part of the publication as a context to the whole: You see a direct attack on the Administration of Justice, she is painted as blind drunk, and the people are taught to believe that no attention is paid to justice, by the Lord Lieutenant or those whom he consults in the Administration of it.

Gentlemen, here is a direct charge with respect to the trial of *Orr*; they desire all thinking Juries to be cautious how they depend on the recommendation of the presiding Judge, leading the people to believe that the Jury and the Judge had recommended the unfortunate man to mercy, and that mercy had been denied; leading the people to believe that the Lord Lieutenant pays no attention to the recommendation of a Judge or Jury; recommending to the Juror not to find a verdict according to his oath, lest afterwards the prisoner should not be pardoned. It is a wicked doctrine endeavoured to be spread abroad that the Lord Lieutenant will not extend mercy where it ought to be extended. It would be too much to say that that Lord Lieutenant ought in all cases extend mercy, even though the Judge should recommend, it belongs to the Minister to consider well before; for it might appear after, that the person recommended was not an object of mercy.

Gentlemen in this case, the case of Mr. *Orr*, we must suppose there was much deliberation, for twice was he respited. I will be bold to say that for one hundred years the crown has never refused to extend mercy to those objects whom the Judge on the trial recommended.

Gentlemen, on the whole of this case you will consider whether this paper could be printed with any other view, than that charged. The fact of publication will be established by the evidence; I have stated to you that the law requires that a copy of every days publication should be deposited in the Stamp Office, signed by the Proprietor. But it happens that the copy deposited for the 26th October, and that alone is not to be found in the Stamp Office. How it has gone, by whose contrivance or machinations it is not for me to observe; but happily we shall supply the defect, we shall prove the paper having been bought where the Press is published, so that there can be no doubt of the proof of publication. With respect to the libel, to any man of common understanding that knows any thing of the nature

nature of our laws and constitution, he cannot hesitate a moment in finding it to be a libel. If you think him guilty of the fact you will find a verdict that will have a tendency to establish the liberty of the Press, and to restore with full force the administration of justice to the people.

Mr. *Attorney General*, then read the opinion of *Judge Buller*, in the case of the King against *Watson*—and he then concluded saying, “I will now produce evidence that will establish the fact of publication; and if it is, as I am instructed it will be, you can have no difficulty in finding the traverser guilty—”

Mr. *George Hatton* sworn. (An affidavit handed to him,)

Q. Is that your name and handwriting?

A. It is.

Q. You are a Commissioner of Stamps?

A. I am.

Q. Was that affidavit sworn before you?

A. It was.

Q. By the prisoner at the bar?

A. I dont know whether it was or not.

Mr. *Curran*. Do you swear positively that he (the traverser) made that affidavit?

Court. Do you swear that affidavit was made before you?

A. I do.

Q. By a person calling himself *Peter Finerty*?

A. I asked him if that was his name and hand writing, and he said it was. The affidavit was then read by Mr. *Pollock* the Clerk of the Crown, dated the 19th of September 1797, and signed *Peter Finerty*.

Examined by Mr. *Townsend*.

John Kingsborough sworn. Q. Have you any newspaper about you?

A. I have. (The witness produced the Press.)

Q. Where did you get it?

A. I believe I bought it to read it, and gave it my father to read.

Q. What became of that paper after you gave it to your father?

A. He returned this paper to me (the one he produced) on Saturday the 9th of December, as the Press I gave to him.

Q. Where did you buy it?

A. At No. 4, Church Lane.

Cross examined by Mr. *Curran*.

Q. Pray, sir, from whom did you buy this paper?

A. I do not know.

Q. Was it from a common news-hawker?

A. I am positive it was not.

Q. Why?

A. Because I went to Church Lane and bought the paper that had that letter from a man in the *Press* office.

Q. You went from mere curiosity to buy one?

A. I did, to read for my own amusement; and I do very often buy it for myself.

Q. How soon after you bought it, did you give it to your father after?

A. I believe the evening, for I bought it in the morning as I was going up to the courts, and I think I gave it to him that evening.

Q. Whose office are you in?

A. Mr. *Kemmis's*.

Q. Where was the paper till you lent it to your father?

A. In my pocket.

Q. Where is your father?—

Mr. *Attorney General*. You say you went there to buy the paper for your own reading merely?

A. I very often did—I bought it as I went to court.

Court. Did you buy any other there before?

A. I won't take upon me to say that I did; but I bought that for my own reading.

Mr. *Curran*. Who was by when you bought it?

A. I did not see any body by; but the man in the office who sold it.

Q. Are you not particularly sure it was not the traverser that sold it?

A. No indeed, I am not, but I won't swear it was not; but it might be him.

Mr. *Attorney General*. Did you enquire at the stamp office for that particular paper?

A. I did. I was desired by Mr. *Kemmis* to go to Mr. *LeStrange* and Mr. *Hatton*, to attend him at his house.

Q. Did you get the paper?

A. No, I did not.

Q. Did you search for it?

A. No; because Mr. *LeStrange* told me he had it at home..

Q. Did you ever ask that officer for it?

A. No, I never was sent to him for it, nor did I see him relative to it. I was told by Doctor Harvey that Mr. *LeStrange* was out of his reason.

Counsellor

Counsellor Thomas Kingsborough sworn, examined by the *Solicitor General*.

Q. Do you recollect at any time getting a paper from your son?

A. Yes; and shortly after I put it into my desk.

Q. Who took it out of your desk?

A. I did.

Q. Which had been under lock and key?

A. Yes.

Q. You kept that key yourself?

A. Yes I did.

Q. I suppose it was put where you locked up other things you kept privately?

A. Yes.

Q. Who was the person you gave it to next after you produced it out of the desk?

A. To my son.

Q. Do you recollect a letter signed *Marcus* in it?

A. I do, and that was the reason I kept it.

Q. Your son was the next person you gave it to after it had been delivered to you?

A. He was.

Question to Mr. *John Kingsborough*. Is that the paper your father returned to you?

A. It is the identical one which he gave me.

Counsellor Kingsborough cross-examined by Mr. *Mac Nally*.

Q. You read the letter before you put the paper into the desk?

A. I did.

Q. And you locked the paper up?

A. Yes.

Q. Did you give it to any body in the house to read?

A. I dont recollect that I did.

Q. There are several in the house that might have recourse to it?

A. No; I have mostly daughters.

Q. Will you take upon you to say you did not lend it?

A. I will not; but I will take upon me to say it was not out of my sight.

Mr. *Mac Nally* submitted to the court, that by a late act of parliament, entitled "an act for securing the Liberty of the Press," every printer of newspaper is bound to deposite with the officer of the Stamp Office, an exact copy of each and every of such newspaper; that the statute created a superior species of evidence than what was before necessary; it does say that a newspaper shall be filed, and that the paper so filed shall be given in evidence as proof of the publication.

Mr.

Mr. Justice Downes, do you mean to contend that there is not evidence to go to the Jury.

Mr. Mac Nally, I mean my Lord to contend that the best evidence the nature of the case requires is not produced.

Mr. Justice Downes—*Mr. Mac Nally* I am sure no gentleman at the bar will contend that.

Mr. Mac Nally, My Lord I do not make the objection individually, I act with other gentlemen, and I never start a point without consulting them; and my lord it will be contended for.

The Clerk of the Crown was going to read the publication from the newspaper proved by *Mr. John Kingsborough*.

Mr. Mac Nally moved that the record might be given to the Traversers Counsel to compare with the publication. He said he would assert on this point individually that it had been the uniform practice, on the most material trials for libels in England, at which he had been present.

The Counsel for the prosecution objected to this.—And

The Court desired the deputy Clerk of the Crown to hold the record while *Mr. Pollock*, Clerk of the Crown read the publication from the newspaper as follows:—THE PRESS, Thursday, October 26th, 1797.

TO HIS

EXCELLENCY THE LORD LIEUTENANT.

MY LORD,

I address your Excellency on a subject as awful and interesting, as any that hath engaged the feelings of this suffering country. The oppression of an individual leads to the oppression of every member in the state, as his death, however speciously palliated by forms, may lead to the death of the constitution. Your Lordship already anticipates me; and your conscience has told you, that I allude to the circumstance of *Mr. Orr*, whose case every man has now made his own, by discovering the principle on which *Mr. Pitt* sent you to execute his orders in Ireland.

The death of *Mr. Orr*, the nation has pronounced one of the most sanguinary and savage acts that had disgraced the laws. In perjury, did you not hear, my Lord, the verdict was given? perjury accompanied with terror, as terror has marked every step of your government. Vengeance and desolation were to fall on those who would not plunge themselves in blood. These were not strong enough: against the express law of the land, not only was drink introduced to the Jury, but drunkenness itself, beastly and criminal drunkenness, was employed to procure the

the murder of a better man, than any that now surrounds you. But well may Juries think themselves justified in their drunken verdicts, if debauched and drunken Judges, swilling spirits on the seat of justice itself, shall set the country so excellent an example.

Repentance, which is a slow virtue, hastened however to declare the innocence of the victim. The mischief which perjury had done, truth now stepped forward to repair; neither was she too late, had humanity formed any part of your counsels. Stung with remorse, on the return of reason, part of his Jury solemnly and soberly made oath, that their verdict had been given under the unhappy influence of intimidation and drink; and in the most serious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God, and to their country, for the sin into which they had been seduced.

The informer too, a man it must be owned not much famed for veracity, but stung with the like remorse, deposed that all he had formerly sworn was malicious and untrue, and that from compunction alone he was induced to make a full disclosure of his great and enormous guilt. In this confession the wicked man had no temptation to perjury; he was not to be paid for that; he had not in view, like another Judas, the "thirty pieces of silver," if he was to receive his reward, he knew he must not look for it in this world.

Those testimonies were followed by the solemn declaration of the dying man himself; and the approach of death is not a moment when men are given to deceive both themselves and the world. Good and religious men are not apt, by perjury on their death beds, to close the gates of Heaven against themselves, like those who have no hope. But if these solemn declarations do not deserve regard, then is there no truth in justice; and though the innocence of the accused had even remained doubtful, it was your duty, my Lord, and you had no exemption from that duty, to have interposed your arm, and saved him from the death that perjury, drunkenness, and reward had prepared for him.

Let not the nation be told that you are a passive instrument in the hands of others—if passive you be, then is your office a shadow indeed—if an active instrument, as you ought to be, you did not perform the duty which the laws required of you—you did not exercise the prerogative of mercy; that mercy which the constitution had entrusted to you for the safety of the subject, by guarding him from the oppression of wicked men. Innocent it appears he was; his blood has been shed; and the precedent indeed is awful.

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Had Frazier and Ross been found guilty of the murder committed on a harmless and industrious peasant—lay your hand to your heart, my lord, and answer without advisers, would you not have pardoned those ruffians? after the proof you have given of your mercy, I must suppose your clemency unbounded. Have no Orange men, convicted on the purest evidence, been at any time pardoned? Is not their oath of blood, connived at? was not that oath manufactured at the command of power? and does not power itself discipline those brigands? But suppose the evidence of Wheatly had been true, what was the offence of Mr. Orr? not that he had taken an oath of blood and extermination—for then he had not suffered—but that he had taken an oath of charity and of union, of humanity and of peace. He has suffered; shall we then be told, that your government will conciliate public opinion, or that the people will not continue to look for a better?

Was the unhappy man respited but to torture him, to insult both justice and the nation, to carry the persecution into the bosom of his wife and children? Is this the prerogative of mercy? What would your father have said unto you, had he lived to witness this falling-off? “Son,” he would have said, “I am a father, I have a daughter; I have known misfortune; the world has pitied me, and I am not ungrateful.”

Let us explore the causes of this sanguinary destruction of the people. Is it that you are determined to revenge the regret expressed by them at the recall of your predecessor; and well knowing they will not shed tears at the departure of his successor, that you are resolved to make them weep during your stay? Yes, my Lord, I repeat during your stay, for it may not be necessary that a Royal Yacht, manned and decorated for the purpose, should wait you from the shores of an angered and insulted Country.

Another cause—Is it to be wondered that a successor of Lord Fitzwilliam should sign the death-warrant of Mr. Orr? Mr. Pitt had learned, that a merciful Lord Lieutenant was unsuited to a government of violence. It was no compliment to the native clemency of a Camden, that he sent you into Ireland; and what has been our portion under the change, but massacre and rape, military murders, desolation and terror?

Had you spared Mr. Orr, you thought, perhaps, the numerous families of those whom your administration had devoted, might accuse you of partiality; and thus to prove your consistency, you are content to be suspected of wanting the only quality this country wishes you to exercise.

But, my Lord, it will not do; though your guards and your soldiers, and your thousands, and your tens of thousands, should

should conduct innocence to death—it will not do.—A voice has cried in the wilderness; and let the deserted streets of Carrickfergus proclaim to all the world, that good men will not be intimidated, and that they are yet more numerous than your soldiers.

We are not Domitian's people; we are not lopped at a blow, but it looks as if some fate had doomed us to be destroyed one by one, as the Persian tyrant ordered the hairs to be plucked from the tail of his beast. Beasts we have been, the vile carriers of the vilest burthens, that the vilest masters could lay upon us. But the yoke is shaken, persecution has provoked to love, and united Ireland against foreign despotism.

Feasting in your castle, in the midst of your myrmidons and bishops, you have little concerned yourself about the expelled and miserable cottager, whose dwelling, at the moment of your mirth was in flames, his wife and his daughter then under the violation of some commissioned ravager, his son agonizing on the bayonet, and his helpless infants crying in vain for mercy. These are lamentations that stain not the hour of carousal. Under intoxicated counsels, the constitution has reeled to its center; justice herself is not only blind-drunk, but deaf, like Festus, “to the words of soberness and truth.”

My Lord, the people of Ireland did hope, that mercy would not have been denied to a most worthy and innocent man, when they understood that one of the worst advisers, and most imperious members of your cabinet, had abandoned the kingdom. Had he been of your late counsels, the odium might have been divided; at present you have the best claim to it. Let, however, the awful execution of Mr. Orr, be a lesson to all unthinking juries; and let them cease to flatter themselves that the soberest recommendation of theirs, and of the presiding Judge, can stop the course of carnage, which sanguinary, and I do not fear to say, unconstitutional laws, have ordered to be loosed; let them remember, that, like Macbeth, the servants of the crown have waded so far in blood, that they find it easier to go on, than to go back.

I am, my Lord,
Your Excellency's humble Servant,
MARCUS.

Mr. *Walter Bourne* was then sworn. Pray Sir, what are you? Deputy Clerk of the Crown for the County of Antrim. Have you the custody of the criminal records of the County? I have. What is that you have in your hand? The record of the conviction of *William Orr*. The original record? Yes Sir.

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The begining of the record was read by the Clerk of the Crown.

The case was rested on the part of the Crown.

Mr. *Fletcher* for the Traverser, said, if he was not mistaken, that in point of law, the Counsel for the Crown had not sufficiently proved their case, however he did not mean to object to their supplying it if they were able. If he understood right, the evidence produced to prove the fact of proprietorship consisted in this. The evidence produced swore that an individual calling himself *Peter Finerty* came to him and did swear that affidavit which was produced in court. But he did not understand from that evidence that Mr. *Finerty*, the Traverser was the person that swore that affidavit. To fix the fact of proprietorship upon the Traverser, the Counsel for the prosecution ought to have gone a step farther. I do conceive, and it has been already suggested, that the best evidence the nature of the case required had not been produced. All that has appeared is, that a man did swear an affidavit purporting that he was the proprietor of the "PRESS" and did sign his name, purporting to be the name of "*Peter Finerty*" but no evidence whatever that he was the Traverser at the bar. It ought to have been proved in some manner that the Traverser was the person who made the affidavit. If the deficiency can be supplied, I do not care, but I shall sit down to hear the opinion of the court upon it.

Mr. *Curran* ; said he trusted that it would not be deemed necessary for him to add to what had been stated. He took it, he said for granted, that there must be some evidence of identity of person. The affidavit that has been read is signed by a person calling himself *Peter Finerty*, but where is the evidence that he was the Traverser at the bar? You see that the intent of the evidence is to shew, that he is the proprietor of the house in Church lane. His declaration of that matter would be easily given in evidence. Suppose an individual man came to the Stamp Office, and said his name was *Peter Finerty*, that he lived in Church-lane, and was proprietor of the Press; why a thousand different persons might say the same thing, and there not be a syllable of truth in the whole of it—there must be laid before the Jury evidence sufficient to satisfy them, that the Traverser at the bar is the person who made that identical declaration.

Mr. *Attorney General*. It strikes me there is sufficient evidence to go to the Jury.

Question by the Jury, to Mr. *Hatton*, will you swear the Traverser at the bar is not the person that made the affidavit? I believe he is the man; he was dressed in a great coat, and seemed as if he came from the printing business. It was rather dark when

when I took the affidavit. (Could any other affidavit have been made without your knowledge ?) There might, but not on that day.

Mr. Curran. The act expressly says that such affidavit shall be evidence against the person who makes it.

A considerable delay followed, in consequence of the prosecutors having sent for Mr. *Sirr* who had taken the Traverser into custody ; at length Mr. *Sirr* appeared and was sworn.

Q. Do you know *Finerty* the Traverser.

A. I do.

Q. Point him out ?

Mr. *Sirr* identified him.

Q. Do you recollect having arrested him ?

A. I do.

Q. On what day, as near as you can recollect, or what month ?

A. It was during the last Commission.

Q. Where did you arrest *Peter Finerty*, the traverser ?

A. In an office called the *Press*-office, in Church-lane.

Q. What number ?

A. Number 4.

Q. Had you any conversation with him at that time ?

A. I had.

Q. Be so good as to state what that conversation was ?

A. I asked him if his name was *Finerty* ?—

Mr. Curran. I trust the counsel for the prosecution will have the candor to apprise the counsel for the traverser, what kind of evidence they are going to give.

Mr. Townsend. I am going to shew declarations of the traverser.

Mr. Curran (to the witness). Was the traverser induced, by any hopes or fears, to say any thing ?

This question was objected to by the counsel for the crown.

Mr. Mac Nally mentioned the case of *Paine*, in 5 Mod. Reports ; where it was ruled, that evidence of conversation of a prisoner should be given, as well what he said in his own behalf, as what made against him.

The counsel for the crown were desired to proceed by the court.

Mr. Townsend (to the witness). You will be kind enough to tell what the conversation you had with the traverser was ?

A. I asked him if his name was *Finerty*, and whether he was the publisher of the *Press* ? and he told me he was.

Q. Is that the man there (pointing to the traverser) ?

A. That is the gentleman.

Cross-examined by Mr. Sampson.

Q. Who was present at the conversation ?

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A. I believe

A. I believe three or four.

Q. Can you name them?

A. There was one I would know, if I saw him; but I do not know his name.

Q. Did you ask the traverser if he was the person who signed the affidavit?

A. I know nothing of the affidavit.

Q. Did you say he acknowledged the publication of the letter signed *Marcus*?

A. I did not.

Q. Was there any friend of yours there?

A. There was; but I did not know it, till I saw him in the office.

Q. Had you a warrant to arrest him?

A. I had.

Q. And you went singly?

A. No; there was a man with me.

Q. What was his name?

A. Mitchell.

Q. Where does he live?

A. In Ship-street.

Q. What is his business?

A. I don't know.

Q. How did you happen to know him, and not his business?

A. I knew him to be an evidence for the crown.

Q. Was it before or after the publication that you arrested him?

A. I should imagine after; it was during the last commission.

Q. What did you do with him, when you took him?

A. I took him to the Castle guard-house, and had him escorted to Newgate?

Q. You, Sir, are also zealous, I understand, for the liberty of the Press, and the suppression of its licentiousness—are you the gentleman that chaced the carrier of the Press, in the night time, with a drawn sword?

Mr. *Justice Downes*. What! ask a man if he pursued another with a drawn sword! I don't think you have a right to ask it.

Mr. *Sampson*. My Lord, I surely have a right to ask it. If the witness was doing his duty, he might do so; if he was committing an offence, he need not acquiesce. If he has not a mind to answer, let him be silent.

Mr. *Sirr*. I did not.

Q. Did you see any person stop the carrier in the public street?

A. I did not.

Q. Pray, Sir, do you know of Mr. *Finerty's* being taken out of the gaol, to the house of an Alderman, one night?

A. I do

A. I do not; I was not present.

Q. Do you know is the Press in the pay of the government, or the treasury?

A. I should suppose not.

Q. Do you not know there are other papers in the pay of the treasury?

Mr. *Justice Downes*. I do not think that question material to the point.

Mr. *Curran*. My Lord, it strikes me it is material in this point of view. This is a prosecution carried on in the name of the state, for a libel on the executive government; and it may therefore be necessary for the jury to know that the government have papers in pay to panagyrize them.

Mr. *Townsend*. The conduct of government certainly is not the subject of the present question.

Mr. *Curran*. Yes it is; and may be the very ground of defence.

Mr. *Justice Downes* (to Mr. *Sampson*). What question do you put?

Mr. *Sampson*. My Lord, they are many; all necessary to let the jury judge of the degree of malice and guilt of this particular charge. The first question I would put is, whether the witness knows what papers are paid by the government?

Mr. *Townsend*. I beg leave to object to that.

Mr. *Curran*. We contend for it on this ground: the conduct of government has been stated to be abused by this publication; and the conduct of government may be part of our defence.

Mr. *Justice Downes*. I don't know that the court sits to enquire into the conduct of government.

Mr. *Attorney General*. I do object to that question; I came by the desire of the government to prosecute for this libel, to which the defendant at the bar has pleaded not guilty, and they now desire to go into evidence that the ministers of the crown have done some thing wrong, to justify what has been done by the prisoner. I do object to it altogether.

Mr. *Sampson*. I believe there is one rule of law and evidence for the crown and the subject, and God forbid it should be otherwise; that nothing shall be stated but what is intended to be proved, or is material to the case of the party stating it. The Press has been stated to be part of a system of sedition and of provocation, and the jury have been prepared to hear much evidence on that ground; but I trust we do not live in a country where the people are to submit to every abuse without even daring to complain, where the Press is to be licentious on the one side, and put down by military force on the other—it is well to recollect at times that the doctrine of passive obedience and non resistance is treason in our law, and remonstrance is not, and that
extreme

extreme provocation is always some excuse for the warmth of expostulation.

Mr. *Justice Downes*. To the point Sir if you please.

Mr. *Sampson*. The point is this ; It was stated that the Press was part of a system of licentiousness and I am about to shew that there are papers that say what they please on one side : and if I can I will prove that this is part of no other system than that of repelling argument by argument, assertion by assertion, invective by invective, and that, at a time when they have 100,000 armed men on the opposite side of the question, and this nothing for its defence but paper shot. I wish to know if I may ask the witness whether he knows of other papers, in the pay of government ?

Mr. *Justice Downes*. That is the question I have already said is not relevant to the case ; therefore it shall not be asked.

Mr. *Sampson*. Did you ever hear of the Northern Star being put down by soldiers ?

A. I have heard of it.

Mr. *Justice Downes*. I dont conceive that question to be more material.

Mr. *Fletcher*. We beg to be set right if we are wrong ; but we suppose passive obedience and non-resistance is treason in our law, and remonstrance is not ; and that extreme provocation is always some excuse for the warmth of expostulation. We are to defend our client for publishing a *false*, malicious, and seditious libel ; we suppose the malice is deducible from the *falsehood*. It is stated to be a malicious libel against the government of the country, and part of a system to bring the administration of justice into contempt, and to dissolve the government. That we conceive to be the question before the Jury, and therefore whether it is a libel or not : and in order to shew that it is a libel, it must be shewn that the publication was published *falsely* and maliciously, and therefore we do conceive we have a right to shew that it is not a false and malicious libel. In the case of murder would it not be evidence to shew every anterior circumstance, to shew the acts of the party killed having tended to the provocation ? Does not the malice arise from the *falsity* of the charge ? Would it not be evidence to shew, that one party struck, and the other repelled. Is not that evidence to go to the Jury ? Therefore if we should give evidence to shew that when this publication was written, it was under an idea of the *truth* of the facts, not thinking them to have been false, would not that go to the Jury as evidence of the intention.

Mr. *Justice Downes*. I do not conceive it at all material to the question before the Jury.

Mr.

Mr. *Sampson* (to Mr. *Sirr*) Did you at any time seize upon a parcel of those papers, entitled the Press.

Mr. *Sirr* objected to answer the question, if he was not obliged.

Mr. *Justice Downes*. You are not obliged to answer that question.

Mr. *Sampson*. If it will criminate you Sir, if you see that you are in danger by answering, I will not persist, otherwise you will answer it certainly.

Mr. *Sirr*. I wont answer it.

Mr. *Sampson*. Did you attend Mr. *Finerty* the night he was taken out of the prison, and carried before the Alderman?

A. I know nothing about it.

Q. What office do you hold?

A. I am deputy Town Major.

Q. Are you a Magistrate?

A. No further.

Mr. *Curran*. I hope your Lordship will be of opinion that the Counsel for the prosecution have not established the case, and that it, therefore, will not be necessary for the Counsel for the Traverfer to state any case, and that the prosecutors having been admitted to the indulgence of strengthening their evidence once, by calling Mr. *Sirr* that they will not be indulged again. It does not appear that any charge has been sufficiently proved to make evidence to go to the Jury; the evidence only goes to this, Mr. *Hatton*, swore that he took an affidavit of some body, who signed the affidavit, and that it was dark; he did not undertake to swear to the person of any man, as having made that affidavit; therefore as the evidence does rest there, namely, that there was an affidavit sworn before him by some body, calling himself *Finerty*, now the question is, whether the want of proof of the identity of the person who so swore the affidavit has been supplied or not? I say not, because they could not by law be admitted to go into the evidence they have endeavoured to give.

It has been stated by the crown, that there was an affidavit made by the Traverfer, which affidavit has been produced in court; and that affidavit is the only evidence they could give; according to the law they ought not to have travelled out of it; here is a written evidence put upon the record of the County. The evidence can only be supported by proving, that the Traverfer was the person who swore that affidavit, and that proof could only have been made by the person before whom the affidavit was made.

Mr. *Justice Downes*. By the traverfer's admission it may be proved.

Mr.

Mr. Curran. I would not controvert that, but I say, in support of the position laid down, when the observation was made, that there is written evidence, that must be given, and no secondary evidence can be received. I take it to be the law, that where evidence is stated to be on written paper, that that written evidence alone must be resorted to, unless it be proved to be destroyed. Suppose a bond in court, could any thing but that bond be let to go to the Jury, proved as it may be? but could you receive evidence that the party did acknowledge that he had signed the bond? It certainly could not be done. There are a variety of ways in which that affidavit may be proved; but I do take it to be a rule of law, that the mere declaration of the party cannot be received in a court of justice.

Mr. Justice Downes. Do you say there is no admissible proof of a publication in a newspaper; and that the affidavit is the only positive proof the law allows? I think it may be proved by more ways than one, as a debt may be due by more ways than by bond.

Mr. Curran. What is the evidence of *Sirr*, that he went to the Press Office, that he arrested a man there? but, I don't rest my objection on one man going to arrest another, taking him by the throat; and that under the terror of such usage, he said he was the printer and publisher of the paper in question that contained the libel; that he was, at the time he was taken the printer and publisher of that paper; but is there any proof that he knew of the publication before it appeared, or that he was the printer of the paper at the time of that publication? Is this to go to the Jury? There is evidence he was the printer on Saturday, therefore he must be the printer on Monday! Suppose a week before, suppose a month before, can the Jury find that because, perhaps through terror, he said he was the printer on the Saturday, that he must have been the printer a month before. In the case of *Rabb*, Printer of the Northern Star— at was a publication in a paper, that is now dead; I remember the objection allowed by the court was, that the affidavit did state that *Rabb* was proprietor of the paper at the time of his making the affidavit before the proper officer; but it did not appear in evidence that he was proprietor of the paper at the time of the publication of the libel; and the court allowed the objection.

Mr. Justice Downes. The Judges were afterwards of opinion that the objection ought not to have been allowed, and I think the court were wrong in not allowing the proof to be sufficient, on this ground, that *Rabb* had continued to be printer till the time of publication.

Mr.

Mr. Curran. Submitted, that from what he had said, he trusted the court would be of opinion, there was not evidence to go to the jury.

Mr. Attorney General. Mr. Curran has stated facts that do not arise on the case at all; the question must go to the jury, and I am convinced there is sufficient evidence to go to the jury, and that there is sufficient evidence to convict the traverser. The question is not, whether he made that affidavit produced from the Stamp Office, the question is, whether he be the publisher of the libel or not? There is sufficient evidence to go to the jury, that the traverser was the publisher, at the place stated in the affidavit, that is, No. 4, Church-lane.

Mr. Justice Downes. I do think there is evidence, that it was printed at No. 4, Church-lane, and Mr. Sirr has said, that he went to that house, and found the traverser there, who said his name was *Peter Finerty*, and that he was the printer of the Press. I think there is evidence to go to the jury.

Juror (to Mr. Hatton). Q. Was there any other person registered as proprietor of that paper, but the man who made the affidavit?

A. No; there was not.

Q. Could there be any other, without your knowledge?

A. No; there could not.

Mr. Fletcher for the traverser.

Q. Are there not other Commissioners of Stamps?

A. There are four.

Q. Might not the affidavit have been taken by them?

A. It is not likely, on that day; I do believe it was the traverser at the bar, that made the affidavit.

Q. Mr. Justice Downes, If there had been any other made, would it have appeared on that paper you have?

A. No; it would not.

Q. by a Juror, If the property had been changed, would there not have been another affidavit?

A. There ought to be another sworn.

Mr. J. Sheares for the traverser.

If they give up the affidavit, they must give some other thing in evidence to support their case.

Mr. Attorney General. We give up nothing; we rest here on the part of the crown.

D E F E N C E.

Mr. *Fletcher* stated the traversers case. He began by saying that he did not know he would have had any duty to discharge in the present case. It was late on the night before, when he found his brief lying on his table, and when he saw on the back of it, the two respectable names of Mr. *Curran* and Mr. *Ponsonby*, who had precedence of him, he did not expect he would have had more to do, than, with the other counsel, merely to have examined the witnesses. He mentioned this to the court and the jury, that if he should not appear to be arranged in what he was going to state, that he might not be charged with inattention. The traverser, he said, stood charged with having printed and published, and having caused to be printed and published, a false, scandalous, and seditious libel. To establish the guilt upon the traverser, there were two things, of which the jury should be convinced; and they were called on to discharge a most awful and solemn duty; they must be convinced of two substantial and material facts, of any of which, if they had any the least hesitation, they were bound by every thing that was sacred, to acquit the traverser. The first point they had to decide was, whether he did print and publish the paper in question, stated to be a false, seditious, and malicious libel, and they must have fully satisfied their minds upon that point, before they were called upon to entertain the second, and then they must consider, whether the paper in question, is a *false, seditious, and malicious* libel or not?

With respect to the preliminary point, whether he did publish the paper in question, the jury had heard much said, and urged by the counsel for the prosecution, to induce the court to be of that opinion. The counsel for the traverser, did conceive, that there was not sufficient evidence to go to the jury, for them to exercise their duty upon; but the disposal of that question by the court, did not preclude the Jury from exercising their judgment: the court was not called upon to give an opinion, and all the court did do, was to decide that there was sufficient evidence for the jury to exercise their discretion upon, from the circumstances sworn to; therefore the jury ought to be convinced, beyond a shadow of doubt, that the traverser at the bar was the publisher of that paper, stated to be a false, malicious, and seditious libel.

He besought the jury to advert to the evidence which had been given, and if it did not flash conviction to their minds, the Judge would tell them it was the boast of the criminal code of this country, that where there was a doubt, there was an imperious call upon them to acquit. He trusted the jury would exercise that
reason

reason with which they were endowed; for by the verdict they should give, must his client stand or fall;—they were therefore called on to exercise with calmness, and divested of passion, as far as human minds are capable of being divested, that discretion with which they had been intrusted by the law.

The evidence which had been laid before the jury, amounted to this: an affidavit is stated, purporting to have been sworn, by a man who passed for *Peter Finerty*—that has been proved; but as to any identity of the traverser at the bar being the person who made the affidavit, there is not the smallest evidence. His hand-writing has not been proved. There has not been a tittle of evidence of either of these facts, of his identity, or of his hand writing; and to a demonstration, no man of reason could draw that conclusion, that the traverser was the identical person that made the affidavit. That the proprietorship of the paper was in the traverser, there was not an iota of evidence. What is the other evidence to support this? A young gentleman (Mr. *Kingborough*, clerk to the crown solicitor) bought a paper containing that letter or writing signed “*MARCUS*,” and which is charged as the libel, for his own amusement; and you are told that he bought it at a certain house; that he gave it afterwards to his father to read; that his father put it by after he had read it; and that he afterwards returned it to his son; and upon that evidence are the jury called upon to decide, that the traverser was guilty of having published that paper called a libel. What is the evidence of the fact? That Mr. *Kingborough* bought the paper at a certain house; not seeing the traverser there; not buying the paper from him, having no communication whatever with him. When the jury coupled these together; when they recollect that there was a legislative interference, namely the necessity imposed upon printers by the stamp-act, of furnishing a paper to the Stamp-office, which should be lodged there; when they recollected that the paper, and the only paper missing, was the identical one in which this libel is charged to have been printed, is not produced on this occasion—it is a conclusive argument that there is some thing singular in the case. What has become of that paper? Where has it gone to? If it was lodged it must have been brought forward, and it then might appear that the traverser did not authenticate it. I put the non production of it on the prosecutors if it was lodged; and by the non production of that paper, there begets a reasonable suspicion that if it was produced it would appear to have been authenticated by some other signature, and not to have been the traversers. The non production of it makes the prosecution weaker than if no act of parliament had passed, because if it had been produced, the production of it might have established the contra-

ry of the fact, and would have shewn that the traverser was not the man that had authenticated it with his name.

Mr. *Fletcher*. Continued and said he had gone through two stages resorted to by the prosecution; after a considerable pause had been, in which the court waited to enable the counsel for the crown to make out the evidence if it could be done, and then a witness is produced who stated that the traverser acknowledged to him, that he was the publisher of the paper; that point had been much argued, but if the jury were not convinced as reasonable, honest, and conscientious men, having no doubt on their minds; that the traverser did really publish the paper in questions if they doubted, if they hesitated on the question, it was their duty by the spirit of the criminal law to acquit the traverser. But if contrary to his opinion, and which he should never believe the jury could, unless they had some private evidence not disclosed, any man in the box having such internal private evidence, ought to come forward and offer himself to be examined in court as to what ever fact he might be in possession of. If any of the Jury was in possession of any such evidence it was not then too late for him to offer himself, and come forward to be examined.

Having touched upon the first question for the consideration of the jury, he would now go to the second part of the case; whether the paper was a seditious, false and malicious paper or not. In discharge of that province which was assigned to the jury, he said they were the sole judges of the law as well as the fact. As to the question whether the writing was a false and seditious one, he would tell the jury that antecedently to some years back, for it was but a few years since the old common law was restored in both countries; juries had been told for more than half a century that as to the fact they had nothing to do, that they had merely to find the fact of the publication, that doctrine has gone to sleep, and peace be with it. When a paper was written against an individual it was stated to be *malicious*; if the government was attacked *seditious* was added by implication of law. Mr. *Attorney General* has stated to the jury the trial and conviction of a person, of whom the jury must have all heard (Mr. *Orr*.) It was stated that the conviction of that unfortunate man had been obtained by the perjury of the witness who prosecuted him, but it was not charged by whom the perjury was procured. It does not appear whether perjury was discovered before the trial or after, and (says Mr. *Fletcher*) I have a right to suppose that the circumstances were not disclosed at the trial. He would therefore take it for granted that there did not appear to the learned Judge who presided at the trial of Mr. *Orr*, any circumstances that could call on him to state to the Jury his doubts, if he had any, as to the credit of the witness.

Mr.

Mr. Fletcher said; he would take it in the most offensive way against the traverser, and put it to the Jury, if these facts which have been stated did appear after the trial, if it was a false and malicious libel, to ground their verdict of guilty; it had been stated to them, that conviction followed the trial. But what followed that? certain of Mr. Orr's Jury did come forward, and state upon their oaths, that drink had been introduced into the jury room, to influence that verdict, which ought to have been given in sobriety and reason. If the fact be as stated by those Jurors, if by weakness of mind produced by liquor, and influenced by the rest of the Jury, if these be the facts, as I am instructed to say they are; what? will the Jury upon their oaths say, that the publication of those facts were a false and malicious libel? What shall I say to that government that would not interpose its power, and save the victim from destruction? No charge against the administration of justice in the country can by any fair deduction be elucidated from the words stated, all that can be extracted from it is, that the verdict was obtained by perjury, if that be true, it establishes this, namely, that it was procured in a manner that it ought not to have been obtained. Suppose the witness had not sworn true, suppose the verdict had been obtained by intimidation, and introduction of drink into the jury box, suppose all this to have been stated, suppose you would be induced to believe all this to be true, suppose you believed that the verdict had been obtained by perjury seconded by drunkenness: I ask you gentlemen of the Jury what would be the feeling of any honest man, supposing the facts true? can human nature furnish words black enough to apply to such a conviction? what would be the opinion of any honest man, when he heard of such a conviction? This prosecution is stated to be in vindication of the government of this country, I stand forth in endeavouring to convince you, that an honest indignation has a right to observe upon those actions it conceives to be bad. Do you imagine gentlemen of the jury, that I would stand forward the advocate for the licentiousness of the Press? God forbid any person should think I would stand up the advocate for the insulted laws of my country. Do you conceive the justice of the country implicated in it? God forbid. What is the freedom you were told you were called upon to defend? does it consist in investigating the faults of the Press? No! It is its licentiousness you are to curb. You have been told it is the most flagitious of all libels. The question for you to decide is, is it *false*. I hold in my hand, a letter for printing which, the printer was prosecuted in England, I mean the letter of the celebrated *Junius* to the King. Hear the words of that *libel*. "The people of England are loyal to the
"house of Hanover, not from a vain preference of one family

“ to another, but from a conviction that the establishment of
 “ that family was necessary to the support of their civil and
 “ religious liberties. This Sir is a principle of allegiance
 “ equally solid and rational; fit for Englishmen to adopt, and
 “ well worthy of your Majesty’s encouragement, we cannot
 “ long be deluded by nominal distinctions. The name of Stu-
 “ art by itself is only contemptible; armed with the sovereign
 “ authority, their principles are formidable. The prince who
 “ imitates their conduct, should be warned by their example;
 “ and while he plumes himself upon the security of his title
 “ to the crown, should remember that, as it was acquired by
 “ one revolution it may be lost by another.”

“ The people of Ireland have been uniformly plundered
 “ and oppressed, in return they give you every day fresh
 “ marks of their resentment. They despise the miserable
 “ governor you have sent them, because he is a creature of
 “ Lord Bute, nor is it from any natural confusion in their
 “ ideas, that they are so ready to confound the original of a
 “ King with the disgraceful representation of him.”

The printer of that letter was prosecuted for publishing it, and an English jury would only find him guilty of the fact of *publishing*, but they would not convict him of having published it with a seditious or malicious intent.

Mr. *Fletcher*, continued to argue at considerable length on the discrimination of English juries, and the unbounded liberty of the English subject to animadvert upon every public topic. It was true he said that the publication in question was harsh and rude, and far from that pleasing two edged sword of Junius; If said he, gentlemen of the jury you shall after what I have said and read to you, be convinced that the publication in question was published with that malicious and seditious intention imputed to it by the indictment, find him guilty; if I were satisfied of the fact I would be the first to desire you to do so.

Mr. *Fletcher*. Then observed upon the abuse which had been given to the character of Lord Moira, in the papers of this country, to an offspring of the soil of Ireland; had he not bled in the cause of England and of Ireland? Is the freedom of the Press to consist merely in panegyrising the measures of the government, let them be right or wrong? If that be the freedom of the Press he had no idea of such a liberty of the Press. That is not the liberty of the Press that put down ship-money; that is not the liberty of the Press that brought the present King to the throne; that was not the liberty of the Press that produced the Revolution. In the case of the dispensing powers? what do the seven bishops; not owe to the liber-

ty of the Press? that was not the liberty of the Press that forced the house of Stuart from the throne. The liberty of the Press does not consist in panegyrising the government of the country, or in libelling individuals. But if a fact of the kind stated in the publication, and we shall have evidence to convince you of it, and to induce you to believe that by the publication of that fact, the freedom of the Press was well exerted, will you say it is false and malicious?

It has been suggested to me that the prosecution is carried on to vindicate the ways of Mr. Pitt to this country. Marvellous indeed! The publication states, that there are burnings, and rapine, and desolation in the land. I conjure you to lay your hands to your hearts, as God shall deal with you, and I ask you is there desolation and burnings in the country? If you do say that there are, and it has been stated in England by that character whose least boast is his descent from the Plantagenets, I mean Lord Moira; he offered to prove at the bar of the English House of Lords; and I hope he will come here, and make the same offer, facts within his own knowledge. Have you heard of that offer? If you have not, there is not a man about you, but has. Will you then be warranted to say, on your oaths, that the traverser printed this publication in the malignity of his heart? Have any of you travelled through the country? have you observed the situation of it? If you have, and find that the traverser has misrepresented every circumstance, find him guilty.

Mr. *Fletcher* concluded by requesting the jury to look to the conduct of the English jurors, in the cases of *Horn Tooke* and *Thelwell*; where, though they acquitted them, after long and heavy trials, the verdicts gave satisfaction. He conjured the jury to weigh well the intention of the traverser; if they were satisfied that he did publish the letter in question; and if, after the evidence that would be adduced, they should be of opinion that the traverser did publish those facts (most of which Lord Moira had offered to verify at the bar of the English House of Lords) falsely, and with the malicious and seditious purpose laid in the indictment; that then, and in that case only, could they be warranted to find the traverser guilty.

EVIDENCE FOR THE TRAVERSER.

The Right Hon Lord *Yelverton* examined by Mr. *Sampson*.

Q. I beg of your lordship to look at that writing (a paper produced to his lordship).

A. I believe the name subscribed to it is mine.

Q. Did

Q. Did not your lordship try *William Orr* ?

A. I did.

Q. Did your lordship transmit the recommendation of the jury ?

A. I did.

Q. Does your lordship know how often he was respited ?

A. According to my recollection, he was respited twice ; three times, if I may mention the respite of his execution at the assizes. You asked me if I sent the recommendation ? I did sent it to Mr. *Pellham*, and I got an answer that the *Lord Lieutenant* was not in town, and that he had no opportunity of consulting him ; and that therefore for the present he could do no more than recommend a respite for two days ; in consequence of which, I respited the execution for sixteen days, in order to give time. After I came to town, there was another of a few days—(I believe from Monday to Thursday ;) and then a further one of a few days more.

Q. Does your lordship know Doctor *McCartney's* hand-writing ?

A. I don't believe I do ; I never saw him write. I know him, and did when in the College ; but I cannot say that I ever saw him write.

Q. Does your lordship know did Mr. *McCartney* lay an affidavit before government, respecting Wheatly, the witness against Mr. *Orr* ?

A. I know he did.

Q. Does your lordship know was it an imputation against the character of Wheatly ?

Mr. *Attorney General*. I object to his lordship answering that question.

Lord *Felverton*. I would have it understood that I have no objection to answer any question.

Mr. *Justice Downes*. I am decidedly of opinion that such evidence is not admissible.

Mr. *Sampson*. Then your lordship's decision is, that we cannot go into any evidence of the truth of the publication, either for the end of justification or extenuation.

Mr. *Justice Downes*. I do ; I hold it so expressly. I hold it to be the constant law. It is the law of the land. It has never been a doubt ; it is a question not even admitted to debate. The question was put to the twelve Judges, while the libel bill was in progress. The question was, whether the truth or falsehood were material, or to be let to go to the jury on the trial of a libel ? and to that question it was answered, that truth or falsehood is not material, or to be left to a jury, on the trial of an information or indictment ; and the opinion goes

goes further, and says, we consider it so firmly settled, that it cannot now be drawn into debate.

Mr. Orr, (*for the Traverser.*) If your Lordship has not fully determined I trust I might be able to shew your lordship, particularly in the case of the seven bishops who were charged with a libel, for falsely and maliciously denying the dispensing power, the court permitted them to produce the rolls of parliament to shew they were true—

Mr. Justice Downes. I am determined in the inadmissibility of the truth of the fact.

Mr. Orr. I do not consider the decision of *Holloway* and *Powel* less constitutional though they were displaced by King James for that opinion.

Mr. Justice Downes. If it wanted any thing to strengthen it, it is to be found in the act of Parliament. It has been adopted by the Judges; and they have not thought fit to vary the practice.

Mr. E. Cooke, chief clerk in the Secretary of States's office,
examined by Mr. Mac Nally.

Q. Do you recollect a paper transmitted to your office by Lord *Yelverton*, as the recommendation of the jury that convicted Mr. Orr?

A. I do recollect it was sent.

Q. Do you recollect if any paper was brought to your office, respecting the trial of Mr. Orr, and delivered by Mr. Macartney in person?

Mr. Justice Downes. What relevancy does that bear to the case?

Mr. Mac Nally. To shew that mercy was denied.

Mr. Justice Downes. I won't suffer that evidence to be gone into.

Mr. Mac Nally (to Mr. Cooke). Do you know whether the papers containing the recommendation of the jury that convicted Mr. Orr, were laid before the Lord Lieutenant?

Mr. Justice Downes. I won't let that question be answered.

Mr. Mac Nally (to the jury). Since evidence of truth will not be allowed, the jury will conclude that the evidence rejected is true.

Evidence on both sides closed.

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The evidence being closed Mr. Curran addressed the Court and Jury on the part of the traverser. Never said he, did I feel myself so sunk under the importance of any cause; to speak to a question of this kind at any time, would require the greatest talent and the most matured deliberation; but to be obliged without either of these advantages to speak to a question that hath so deeply shaken the feelings of this already irritated and agitated nation; is a task that fills me with embarrassment and dismay. Neither my learned Colleague or myself received any instruction or license until after the Jury were actually sworn, and we both of us came here, under an idea that we should not take any part in the Trial. This circumstance I mention not as an idle apology for an effort, that cannot be the subject of either praise or censure, but as a call upon you, gentlemen of the Jury to supply the defects of my efforts, by a double exertion of your attention.

Perhaps I ought to regret that I cannot begin with any compliment, that may recommend me or my client personally to your favour. A more artful advocate would probably begin his address to you by compliments on your patriotism, and by felicitating his client upon the happy selection of his Jury, and upon that unsuspected impartiality in which if he was innocent he must be safe. You must be conscious Gentlemen, that such idle verbiage as that, could not convey either my sentiments or my clients upon that subject. You know and we know upon what occasion you are come, and by whom you have been chosen; you are come to try an accusation professedly brought forward by the state, chosen by a Sheriff who is appointed by our accuser.

(Here Mr. Attorney General said the Sheriff was elected by the city, and that that observation was therefore unfounded.)

Be it so; I will not now stop to inquire whose property the city may be considered to be, but the learned gentleman seems to forget that the election by that city, to whosoever may belong, is absolutely void without the approbation of that very Lord Lieutenant, who is the prosecutor in this case. I do therefore repeat, gentlemen, that not a man of you has been called to that box by the voice of my client; that he has had no power to object to a single man among you, though the crown has, and, that you yourselves must feel under what influence you are chosen, or for what qualifications you are particularly selected. At a moment when this wretched land is shaken to its centre by the dreadful conflicts of the different branches of the community; between those who call themselves the partizans of liberty, and those that call themselves the partizans of power; between the advocates of infatuation, and the advocates of suffering;
upon

upon such a question as the present, and at such a season, can any man be at a loss to guess from what class of character and opinion, a friend to either party would resort for that jury, which was to decide between both. I trust, gentlemen, you know me too well to suppose that I could be capable of treating you with any personal disrespect; I am speaking to you in the honest confidence of your fellow citizen. When I allude to those unworthy imputations of supposed bias, or passion, or partiality, that may have marked you out for your present situation; I do so in order to warn you of the ground on which you stand, of the point of awful responsibility in which you are placed, to your conscience and to your country; and to remind you that if you have been put into that box from any unworthy reliance on your complaisance or your servility, you have it in your power before you leave it, to refute and to punish so vile an expectation by the integrity of your verdict; to remind you that you have it in your Power to shew to as many Irishmen as yet linger in their country, that all law and justice have not taken their flight with our prosperity and our peace; that the sanctity of an oath and the honesty a Juror, are not yet dead amongst us; and that if our courts of justice are superseded by so many strange and terrible tribunals, it is not because they are deficient either in wisdom or virtue.

Gentlemen, it is necessary that you should have a clear idea first of the law, by which this question is to be decided, secondly of the nature and object of the prosecution. As to the first, it is my duty to inform you that the law respecting libels has been much changed of late.—Heretofore, in consequence of some decisions of the Judges in Westminster-hall, the Jury was conceived to have no province but that of finding the truth of the innuendoes and the fact of publication; but the libellous nature of that publication, as well as the guilt or innocence of the publication, were considered as exclusively belonging to the court. In a system like that of law, which reasons logically, no one erroneous principle can be introduced, without producing every other that can be deducible from it. If in the premises of any argument you admit one erroneous proposition, nothing but bad reasoning can save the conclusion from falsehood. So it has been with this encroachment of the Court upon the province of the Jury with respect to libels. The moment the Court assumed as a principle that they, the Court, were to decide upon every thing but the publication; that is, that they were to decide upon the question of libel or no libel, and upon the guilt or innocence of the intention, which must form the essence of every crime; the guilt or innocence must of necessity have ceased to be material. You see gentlemen, clearly that the question of intention is a mere question of fact. Now the moment the Court determined that the

Jury was not to try that question, it followed of necessity that it was not to be tried at all; for the court cannot try a question of fact. When the Court said that it was not triable, there was no way of fortifying that extraordinary proposition, except by asserting that it was not material. The same erroneous reasoning carried them another step, still more mischievous and unjust: if the intention had been material, it must have been decided upon as a mere fact under all its circumstances. Of these circumstances the meanest understanding can see that the leading one must be the truth or the falsehood of the publication; but having decided the intention to be immaterial, it followed that the truth must be equally immaterial—and under the law so distorted, any man in England who published the most undeniable truth, and with the purest intention, might be punished for a crime in the most ignominious manner, without imposing on the prosecutor the necessity of proving his guilt, or getting any opportunity of shewing his innocence. I am not in the habit of speaking of legal institutions with disrespect; but I am warranted in condemning that usurpation upon the rights of juries, by the authority of that statute, by which your jurisdiction is restored. For that restitution of justice the British subject is indebted to the splendid exertions of Mr. Fox and Mr. Erskine,—those distinguished supporters of the Constitution and of the law; and I am happy to say to you, that though we can claim no share in the glory they have so justly acquired, we have the full benefit of their success; for you are now sitting under a similar act passed in this country, which makes it your duty and your right to decide upon the entire question upon its broadest grounds and under all its circumstances, and of course to determine, by your verdict, whether this publication be a false and scandalous libel: false in fact, and published with the seditious purpose alledged of bringing the Government into scandal, and instigating the people to insurrection.

Having stated to you, gentlemen, the great and exclusive extent of your jurisdiction, I shall beg leave to suggest to you a distinction that will strike you at first sight; and that is the distinction between public animadversions upon the character of private individuals, and those which are written upon measures of government, and the persons who conduct them. The former may be called personal, and the latter political publications. No two things can be more different in their nature, nor in the point of view in which they are to be looked on by a Jury. The criminality of a mere personal libel consists in this, that it tends to a breach of the peace; it tends to all the vindictive paroxysms of exasperated vanity, or to the deeper and more deadly vengeance of irritated pride.—The truth is, few men see at once that they cannot

cannot be hurt so much as they think by the mere battery of a newspaper. They do not reflect that every character has a natural station, from which it cannot be effectually degraded, and beyond which it cannot be raised by the bawling of a news-hawker. If it is wantonly aspersed, it is but for a season, and that a short one, when it emerges like the Moon from a passing cloud to its original brightness. It is right, however, that the law, and that you should hold the strictest hand over this kind of public animadversion, that forces humility and innocence from their retreat into the glare of public view; that wounds and terrifies; that destroys the cordiality and the peace of domestic life; and that without eradicating a single vice, or a single folly plants a thousand thorns in the human heart.

In cases of that kind I perfectly agree with the law, as stated from the bench; in such cases, I hesitate not to think, that the truth of a charge ought not to justify its publication. If a private man is charged with a crime, he ought to be prosecuted in a court of justice, where he may be punished if it is true, and the accuser if it is false; but far differently do I deem of the freedom of political publication. The salutary restraint of the former species, which I talked of, is found in the general law of all societies whatever; but the more enlarged freedom of the Press, for which I contend in political publication; I conceive to be founded in the peculiar nature of the British Constitution, and to follow directly from the contract on which the British Government hath been placed by the Revolution. By the British Constitution, the power of the state is a trust, committed by the people, upon certain conditions; by the violation of which, it may be abdicated by those who hold, and resumed by those who conferred it. The real security therefore of the British Sceptre, is the sentiment and opinion of the people, and it is consequently their duty to observe the conduct of the government; and it is the privilege of every man, to give them full and just information upon that important subject. Hence the Liberty of the Press is inseparably twined with the Liberty of the People. The Press is the great public Monitor; its duty is that of the historian and the witness, that "*Nil falsi audeat, nil veri non audeat dicere*;" that its horizon shall extend to the farthest verge and limit of truth; that beyond that limit it shall not dare to pass; that it shall speak truth to the King, in the hearing of the People, and to the People, in the hearing of the King; that it shall not perplex either the one or the other with false alarm, lest it lose its character for veracity, and become an unheeded warner of real danger; lest it should vainly warn them of that sin, of which the inevitable consequence is death. This, gentlemen, is the great privilege upon which you are to decide; and I have detained you the longer, because of the late
change

change of the law, and because of some observations that have been made, which I shall find it necessary to compare with the principles I have now laid down.

And now, gentlemen, let us come to the immediate subject of the trial, as it is brought before you, by the charge in the indictment, to which it ought to have been confined; and also, as it is presented to you by the statement of the learned counsel, who has taken a much wider range, than the mere limits of the accusation, and has endeavoured to force upon your consideration, extraneous and irrelevant facts, for reasons which it is my duty to explain. The indictment states simply that Mr. Finerty has published a false and scandalous libel, upon the Lord Lieutenant of Ireland, tending to bring his government into disrepute and to alienate the affections of the people; and one would have expected, that without stating any other matter, the counsel for the crown would have gone directly to the proof of this allegation; but he has not done so; he has gone to a most extraordinary length indeed, of preliminary observation, and an illusion to facts, and sometimes an assertion of facts, at which I own I was astonished, until I saw the drift of these allusions and assertions. Whether you have been fairly dealt with by him, or are now honestly dealt with by me, you must be judges. He has been pleased to say that this prosecution is brought against this letter signed Marcus, merely as a part of what he calls a system of attack upon government, by the paper called the PRESS. As to this, I will only ask you whether you are fairly dealt with? Whether it is fair treatment to men upon their oaths, to insinuate to them, that the general character of a newspaper, (and that general character founded merely upon the assertion of the prosecutor), is to have any influence upon their minds, when they are to judge of a particular publication? I will only ask you what men you must be supposed to be, when it is thought that even in a court of justice, and with the eyes of the nation upon you, you can be the dupes of that trite and exploded expedient, so scandalous of late, in this country, of raising a vulgar and mercenary cry, against whatever man, or whatever principle it is thought necessary to put down; and I shall therefore merely leave it to your own pride to suggest upon what foundation it could be hoped, that a senseless clamour of that kind, could be echoed back by the yell of a jury upon their oaths. I trust, you see that this has nothing to do with the question.

Gentlemen of the Jury, other matters have been mentioned, which I must repeat for the same purpose; that of shewing you that they have nothing to do with the question. The learned

learned Counsel has been pleased to say, that he comes forward in this prosecution as the real advocate for the Liberty of the Press, and to protect a mild and a merciful government from its licentiousness; and he has been pleased to add, that the Constitution can never be lost while its freedom remains, and that its licentiousness alone can destroy that freedom. As to that, gentlemen, he might as well have said, that there is only one mortal disease of which a man can die; I can die the death inflicted by tyranny; and when he comes forward to extinguish this paper in the ruin of the Printer by a state prosecution, in order to prevent its dying of licentiousness, you must judge how candidly he is treating you, both in the fact and in the reasoning. Is it in Ireland, gentlemen, that we are told licentiousness is the only disease that can be mortal to the Press? Has he heard of nothing else that has been fatal to the freedom of publication? I know not whether the Printer of the Northern Star may have heard of such things in his captivity, but I know that his wife and his children are well apprized that a Press may be destroyed in the open day, not by its own licentiousness, but by the licentiousness of a military force. As to the sincerity of the declaration that the state has prosecuted in order to assert the freedom of the Press, it starts a train of thought, of melancholy retrospect and direful prospect, to which I did not think the learned counsel would have wished to commit your minds. It leads you naturally to reflect at what times, from what motives, and with what consequences the government has displayed its patriotism, by these sorts of prosecutions. As to the motives; does History give you a single instance in which the state has been provoked to these conflicts, except by the fear of truth, and by the love of vengeance? Have you ever seen the rulers of any country bring forward a prosecution from motives of filial piety, for libels upon their departed ancestors? Do you read that Elizabeth directed any of those state prosecutions, against the libels which the Divines of her times, had written against her Catholic sister; or against the other libels which the same gentlemen had written against her Protestant father? No, gentlemen, we read of no such thing; but we know she did bring forward a prosecution from motives of personal resentment, and we know that a Jury was found three-serving and mean enough to give a verdict, which she was ashamed to carry into effect. I said the learned Counsel drew you back to the times that have been marked by these miserable conflicts. I see you turn your thoughts to the reign of the second James. I see you turn your eyes to those pages of governmental abandonment, of popular degradation, of expiring liberty, of merciless and sanguinary persecution;

secution ; to that miserable period, in which the fallen and abject state of man, might have been almost an argument in the mouth of the Atheist and the Blasphemer, against the existence of an all just and an all wise first cause ; if the glorious æra of the Revolution that followed it, had not refuted the impious inference, by shewing that if man descends, it is not in his own proper motion ; that it is with labour and with pain, and that he can continue to sink only until by the force and pressure of the descent, the spring of his immortal faculties acquires that recuperative energy and effort that hurries him as many miles aloft—he sinks but to rise again. It is at that period that the state seeks for shelter in the destruction of the Press ; it is in a period like that, that the tyrant prepares for the attack upon the people, by destroying the liberty of the Press ; by taking away that shield of wisdom and of virtue, behind which the people are invulnerable ; in whose pure and polished convex, ere the lifted blow has fallen he beholds his own image, and is turned into stone. It is at those periods that the honest man dares not speak, because truth is too dreadful to be told ; is it then humanity has no ears, because humanity no tongue. It is then the proud man scorns to speak, but like a Physician baffled by the wayward excesses of a dying patient, retires indignantly from the bed of an unhappy wretch, whose ear is too fastidious to bear the sound of wholesome advice, whose palate is too debauched to bear the salutary bitter of the medicine that might redeem him ; and therefore leaves him to the felonious piety of the slaves that talk to him of life, and strip him before he is cold.

I do not care, gentlemen, to exhaust too much of your attention, by following this subject through the last century with much minuteness ; but the facts are too recent in your mind not to shew you that the liberty of the Press, and the liberty of the People, sink and rise together ; that the liberty of speaking, and the liberty of acting, have shared exactly the same fate. You must have observed in England that their fate has been the same in the successive vicissitudes of their late depression ; and sorry I am to add, that this country has exhibited a melancholy proof of their inseparable destiny, through the various and further stages of deterioration down to the period of their final extinction ; when the Constitution has given place to the sword, and the only Printer in Ireland, who dares to speak for the people, is now in the dock.

Gentlemen, the learned Counsel has made the real subject of this prosecution so small a part of his statement, and has led you into so wide a range, certainly as necessary to the object, as inapplicable to the subject of this prosecution ; that I trust you will think me excusable in somewhat following his example.

example. Glad am I to find that I have the authority of the same example, for coming at last to the subject of this trial. I agree with the learned Counsel, that the charge made against the Lord Lieutenant of Ireland, is that of having grossly and inhumanly abused the royal prerogative of mercy, of which the King is only the trustee for the benefit of the people. The facts are not controverted. It has been asserted that their truth or falsehood is indifferent, and they are shortly these, as they appear in this publication.

William Orr was indicted for having administered the oath of an United Irishman. Every man now knows what that oath is; that it is simply an engagement first to promote a brotherhood of affection among men of all religious distinctions; secondly to labour for the attainment of a Parliamentary Reform; and thirdly an obligation of secrecy, which was added to it when the Convention law made it criminal and punishable to meet by any public delegation for that purpose. After remaining upwards of a year in gaol, Mr. Orr was brought to his trial; was prosecuted by the state; was sworn against by a common informer of the name of Wheatly, who himself had taken the obligation, and was convicted under the insurrection act, which makes the administering such an obligation felony of death—The Jury recommended Mr. Orr to mercy; the Judge, with an humanity becoming his character transmitted the recommendation to the noble prosecutor in this case. Three of the Jurors made solemn affidavit in Court that liquor had been conveyed into their box; that they were brutally threatened by some of their fellow-jurors with capital prosecution if they did not find the prisoner guilty; and that under the impression of those threats, and worn down by watching and intoxication, they had given a verdict of guilty against him, though they believed him in their conscience to be innocent. That further enquiries were made, which ended in a discovery of the informer's famous life and character of the informer; that a respite was therefore sent once, and twice, and thrice to give time, as Mr. Attorney General has stated, for his Excellency to consider whether mercy *could* be extended to him or not, and that with a knowledge of all these circumstances, his Excellency did finally determine that mercy should not be extended to him, and that he was accordingly executed upon that verdict. Of this publication, which the indictment charges to be false and seditious, Mr. Attorney General is pleased to say that the design of it is to bring the Courts of Justice into contempt. As to this point of fact, gentlemen, I beg to set you right.

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To the administration of Justice, so far as it relates to the Judges, this publication has not even an illusion in any part mentioned in this indictment; It relates to a department of justice, that cannot begin until the duty of the Judge is closed. Sorry should I be, that with respect to this unfortunate man, any censure should be flung on those Judges who presided at this trial, with the mildness and temper that became them, upon so awful an occasion as the trial of life and death. Sure am I, that if they had been charged with inhumanity or injustice, and if they had condescended at all to prosecute the reviler, they would not have come forward in the face of the public to say, as has been said this day, that it was immaterial whether the charge was true or not. Sure I am, their first object would have been to shew that it was false, and ready should I have been an eye witness of the fact, to have discharged the debt of ancient friendship, of private respect, and of public duty, and upon my oath, to have repelled the falshood of such an imputation. Upon this subject, gentlemen, the presence of those venerable Judges restrains what I might otherwise have said, nor should I have named them at all if I had not been forced to do so, and merely to undeceive you if you have been made to believe their characters to have any community of cause whatever with the Lord Lieutenant of Ireland. To him alone it is confined, and against him the charge is made, as strongly I suppose as the writer could find words to express it, that the Viceroy of Ireland has cruelly abused the prerogative of royal mercy, in suffering a man under such circumstances to perish like a common malefactor. For this Mr. Attorney general calls for your conviction as a false and scandalous libel; and after stating himself every fact that I have repeated to you, either from his statement or from the evidence, he tells you that you ought to find it false and scandalous, though he almost in words admits that it is not false, and has resisted the admission of the evidence by which we offered to prove every word of it to be true.

And here, gentlemen, give me leave to remind you of the parties before you. The traverser is a printer, who follows that profession for bread, and who at a time of great public misery and terror, when the people are restrained by law from debating under any delegated form; when the few constituents that we have are prevented by force from meeting in their own persons, to deliberate or to petition; when every other newspaper in Ireland is put down by force, or purchased by the administration; (though here, gentlemen, perhaps I ought to beg your pardon for stating without authority—I recollect when we attempted to examine as to the number of newspapers in the pay of the Castle, that the evidence was objected to,) at a season like this, Mr. Finerty has had the courage, perhaps the folly,

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to print the publication in question, from no motive under Heaven of malice or vengeance, but in the mere duty which he owes to his family and to the public. His prosecutor is the King's Minister in Ireland; in that character does the learned gentleman mean to say, that his conduct is not a fair subject of public observation? where does he find his authority for that, in the law or practice of the sister country? have the virtues, or the exalted station, or the general love of his people preserved the sacred person, even of the royal master of the prosecutor, from the asperity and the intemperance of public censure, unfounded as it ever must be, with any personal respect to his Majesty, injustice or truth? have the gigantic abilities of Mr. Pitt, have the more gigantic talents of his great antagonist, Mr. Fox, protected either of them from the insolent familiarity, and for ought to know, the injustice with which writers have treated them? What latitude of invective has the King's Minister escaped, upon the subject of the present war? Is there an epithet of contumely or of reproach, that hatred or that fancy could suggest, that are not publicly lavished upon him? Do you not find the words, advocate of despotism, robber of the public treasure, murderer of the King's subjects, debaucher of the public morality, degrader of the constitution, tarnisher of the British empire, by frequency of use lose all meaning whatsoever, and dwindle into terms, not of any peculiar reproach, but of ordinary appellation? And why, gentlemen, is this permitted in that country? I'll tell you why; because in that country they are yet wise enough to see, that the measures of the state are the proper subjects for the Freedom of the Press; that the principles relating to personal slander, do not apply to rulers or to Ministers; that to publish an attack upon a public Minister, without any regard to truth, but merely because of its tendency to a breach of the peace, would be ridiculous in the extreme. What breach of the peace, gentlemen, I pray you in such a case? Is it the tendency of such publications, to provoke Mr. Pitt or Mr. Dundas, to break the head of the writer, if they should happen to meet him? No, gentlemen, in that country this freedom is exercised, because the people feel it to be their right; and it is wisely suffered to pass by the state, from a consciousness that it would be vain to oppose it; a consciousness confirmed by the event of every incautious experiment. It is suffered to pass from a conviction that in a court of justice at least, the bulwarks of the constitution will not be surrendered to the state, and that the intended victim, whether clothed in the humble guise of honest industry, or decked in the honors of genius, and virtue, and philosophy; whether an Hardy or a Tooke, will find certain protection in the honesty and spirit of an English jury.

But, gentlemen, I suppose Mr. Attorney will scarcely wish to carry his doctrine altogether so far. Indeed, I remember, he declared himself a most zealous advocate for the Liberty of the Press. I may, therefore, even according to him, presume to make some observations on the conduct of the existing government. I should wish to know how far he supposes it to extend, is it to the composition of lampoons and madrigals, to be sung down the grates by ragged ballad mongers, to kitchen maids and footmen. I will not suppose that he means to confine it to their ebullitions of Billingsgate, to those cataracts of ribaldry and scurrility, that are daily spouting upon the miseries of our wretched fellow sufferers, and the unavailing efforts of those who have vainly laboured in their cause. I will not suppose that he confines it to the poetic licence of a birth day ode, the laureat would not use such language! in which case I do entirely agree with him, that the truth or the falsehood is as perfectly immaterial to the law, as it is to the laureat, as perfectly unrestrained by the law of the land, as it is by any law of decency or shame, or modesty or decorum. But as to the privilege of censure or blame, I am sorry that the learned gentleman has not favoured you with his notion of the Liberty of the Press. Suppose an Irish Viceroy acts a very little absurdly.—May the Press venture to be respectfully comical upon that absurdity? The learned Council does not at least in terms give a negative to that. But let me treat you honestly, and go further, to a more material point: suppose an Irish Viceroy does an act that brings scandal upon his master,—that fills the mind of a reasonable man with the fear of approaching despotism that leaves no hope to the people of preserving themselves and their children from chains, but in common confederacy for common safety. What is that honest man in that case to do? I am sorry *the right honourable advocate for the liberty of the Press* has not told you his opinion: at least in any express words. I will therefore venture to give you my far humbler thought upon the subject. I think an honest man ought to tell the people frankly and boldly of their peril, and I must say I can imagine no villainy greater than that of his holding a traitorous silence at such a crisis; except the villainy and baseness of prosecuting him; or of finding him guilty for such an honest discharge of his public duty. And I found myself on the known principle of the Revolution of England, namely, that the Crown itself may be abdicated by certain abuses of the trust reposed, and that there are possible excesses of arbitrary power, which it is not only the right but the bounden duty of every honest man to resist at the risque of his fortune and his life. Now Gentlemen if this reasoning be admitted, and it cannot be denied, if there be any possible event in which the people

people are obliged to look only to themselves, and are justified in doing so can you be so absurd as to say that it is lawful to the people to act upon it when it unfortunately does arrive, but that it is criminal in any man to tell them that the miserable event has actually arrived, or is imminently approaching? far am I gentlemen from insinuating that (extreme as it is) our misery has been matured into any deplorable crisis of this kind, from which I pray that the almighty God may for ever preserve us. But I am putting my principle upon the strongest ground, and most favourable to my opponents, namely, that it never can be criminal to say any thing of the government but what is false, and I put this in the extreme in order to demonstrate to you *a fortiori*, that the privilege of speaking truth to the people which holds in the last extremity must also obtain in every stage of inferior importance; and that however a court may have decided before the late act, that the truth was immaterial in case of libel, that since that act no honest jury can be governed by such a principle.

Be pleased now, gentlemen, to consider the grounds upon which this publication is called a libel, and criminal. Mr. Attorney tells you, it tends to excite sedition and insurrection. Let me again remind you, that the truth of this charge is not denied by the noble prosecutor. What is it then, that tends to excite sedition and insurrection? "The act that is charged upon the prosecutor, and is not attempted to be denied. And, Gracious God! Gentlemen of the Jury, is the public statement of the King's representative this? I have done a deed that must fill the mind of every feeling or thinking man, with horror and indignation, that must alienate every man that knows it, from the King's government, and endanger the separation of this distracted empire; the traverser has had the guilt of publishing this fact, which I myself acknowledge, and I pray you to find him guilty." Is this the case which the Lord Lieutenant of Ireland brings forward? Is this the principle for which he ventures, at a dreadful crisis like the present, to contend in a court of justice? Is this the picture which he wishes to hold out of himself, to the justice and humanity of his own countrymen? Is this the history which he wishes to be read by the poor Irishman of the South and of the North, by the sister nation, and the common enemy?

With the profoundest respect, permit me humbly to defend his Excellency, even against his own opinion. The guilt of this publication he is pleased to think, consists in this, that it tends to insurrection. Upon what can such a fear be supported? After the multitudes that have perished in this unhappy nation within that last three years, and which has been borne with a
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patience unparalleled in the story of nations, can any man suppose that the fate of a single individual could lead to resistance or insurrection? But suppose that it might, what ought to be the conduct of an honest man? Should it not be to apprize the government and the country of the approaching danger? Should it not be, to say to the Viceroy, you will drive the people to madness, if you persevere in such bloody councils, you will alienate the Irish nation, you will distract the common force, and you will invite the common enemy. Should not an honest man say to the people, the measure of your affliction is great, but you need not resort for remedy to any desperate expedients. If the King's Minister is defective in humanity or wisdom, his royal master, and your beloved Sovereign is abounding in both; at such a moment, can you be so senseless as not to feel that any one of you ought to hold such language, or is it possible you could be so infatuated, as to punish the man who was honest enough to hold it? Or is it possible that you could bring yourselves to say to your country, that at such a season, the Press ought to sleep upon its post, or to act like the perfidious watchman on his round, that sees the villain wrenching the door, or the flames bursting from the windows, while the inhabitant is wrapt in sleep, and cries out that "past five o'clock, the morning is fair, and all well."

On this part of the case, I shall only put one question to you. I do not affect to say it is similar in all its points; I do not affect to compare the humble fortunes of Mr. Orr, with the sainted names of Russell or of Sydney; still less am I willing to find any likeness between the present period, and the year 1683. But I will put a question to you, completely parallel in principle. When that unhappy and misguided Monarch had shed the sacred blood, which their noble hearts had matured into a fit cement of revolution. If any honest Englishman had been brought to trial for daring to proclaim to the world his abhorrence of such a deed, what would you have thought of the English jury that could have said? We know in our hearts that what he said was true and honest; but we will say upon our oaths that it was false and criminal, and we will by that base subserviency, add another item to the catalogue of public wrongs, and another argument for the necessity of an appeal to Heaven for redress.

Gentlemen, I am perfectly aware that what I say may be easily misconstrued, but if you listen to me with the same fairness that I address you, I cannot be misunderstood. When I shew you the full extent of your political rights and remedies; when I answer those slanderers of British liberty, which degrade the Monarch into a despot, who degrade the steadfastness
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of law, into the waywardness of will ; when I shew you the inestimable stores of political wealth so dearly acquired by our ancestors, and so solemnly bequeathed ; and when I shew you how much of that precious inheritance has yet survived all the prodigality of their posterity, I am far from saying that I stand in need of it all upon the present occasion. No gentlemen, far indeed am I from such a sentiment. No man more deeply than myself, deploras the present melancholy state of our unhappy country. Neither does any man more fervently wish for the return of peace and tranquillity, through the natural channels of mercy and of justice. I have seen too much of force and of violence, to hope much good from the continuance of them on one side, or retaliation from another. I have seen too much of late, of political re-building, not to have observed that to demolish, is not the shortest way to repair. It is with pain and anguish that I should search for the miserable right of breaking ancient ties, or going in quest of new relations, or untried adventurers. No, gentlemen, the case of my client, rests upon these sad privileges of despair. I trust that as to the fact, namely, the intention of exciting insurrection, you must see it cannot be found in this publication, that it is the mere idle, unsupported imputation of malice, or panic, or falsehood. And that as to the law, so far has he been from transgressing the limits of the constitution, that whole regions lie between him and those limits which he has not trod : and which I pray to Heaven, it may never be necessary for any of us to tread.

Gentlemen, Mr. Attorney General has been pleased to open another battery upon this publication, which I do trust I shall silence, unless I flatter myself too much in supposing that hitherto my resistance has not been utterly unsuccessful. He abuses it for the foul and insolent familiarity of its address. I do clearly understand his idea ; he considers the freedom of the Press to be the license of offering that paltry adulation which no man ought to stoop to utter or to hear ; he supposes the freedom of the Press ought to be like the freedom of a King's jester, who, instead of reproving the faults of which his Majesty ought to be ashamed, is base and cunning enough, under the mask of servile and adulatory censure, to stroke down and pamper those vices of which he is foolish enough to be vain.—He would not have the Press presume to tell the Viceroy that the prerogative of mercy is a trust for the benefit of the subject, and not a gaudy feather stuck into the diadem to shake in the wind, and by the waving of the gaudy plumage to amuse the vanity of the wearer.—He would not have it say to him that the discretion of the Crown as to mercy, is like the discretion of a court of justice

as to law, and that in the one case, as well as the other, wherever the propriety of the exercise of it appears, it is equally a matter of right. He would have the Press all fierceness to the people, and all sycophancy to power; he would have it consider the mad and phrenetic depopulations of authority, like the awful and inscrutable dispensations of Providence, and say to the unfeeling and despotic spoiler in the blasphemed and insulted language of religious resignation—the Lord hath given, and the Lord hath taken away, blessed be the name of the Lord!!! But let me condense the generality of the learned gentleman's invective into questions that you can conceive. Does he mean that the air of this publication is rustic and unworthy? Does he mean that when Marcus presumed to ascend the steps of the Castle, and to address the Viceroy, he did not turn out his toes as he ought to have done? But gentlemen you are not a jury of dancing-masters; or does the learned gentleman mean that the language is coarse and vulgar? If this be his complaint, my client has but a poor advocate. I do not pretend to be a mighty grammarian, or a formidable critic; but I would beg leave to suggest to you in serious humility, that a Free Press can be supported only by the ardor of men who feel the prompting sting of real or supposed capacity; who write from the enthusiasm of virtue, or the ambition of praise, and over whom, if you exercise the rigour of a grammatical censorship, you will inspire them with as mean an opinion of your integrity as your wisdom, and inevitably drive them from their post—and if you do, rely upon it, you will reduce the spirit of publication, and with it the Press of this country, to what it for a long interval has been, the register of births, and fairs, and funerals, and the general abuse of the people and their friends.

But, gentlemen, in order to bring this charge of insolence and vulgarity to the test, let me ask you whether you know of any language which could have adequately described the idea of mercy denied where it ought to have been granted, or of any phrase vigorous enough to convey the indignation which an honest man would have felt upon such a subject? Let me beg of you for a moment to suppose that any one of you had been the writer of this very severe expostulation with the Viceroy, and that you had been the witness of the whole progress of this never to be forgotten catastrophe. Let me suppose that you had known the charge upon which Mr. Orr was apprehended, the charge of abjuring that bigotry which had torn and disgraced his country, of pledging himself to restore the people of his country to their place in the constitution, and of binding himself never to be the betrayer of his fellow-labour-

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ers in that enterprize; that you had seen him upon that charge removed from his industry, and confined in a gaol; that through the slow and lingering progress of 12 tedious months you had seen him confined in a dungeon, shut out from the common use of air and of his own limbs; that day after day you had marked the unhappy captive, cheered by no sound but the cries of his family, or the clinking of chains; that you had seen him at last brought to his trial; that you had seen the vile and perjured informer deposing against his life; that you had seen the drunken, and worn out, and terrified Jury give in a verdict of death; that you had seen the same Jury, when their returning sobriety had brought back their consciences, prostrate themselves before the humanity of the Bench, and pray that the mercy of the crown might save their characters from the reproach of an involuntary crime, their consciences from the torture of eternal self-condemnation, and their souls from the indelible stain of innocent blood. Let me suppose that you had seen the respite given, and that contrite and honest recommendation transmitted to that seat, where mercy was presumed to dwell; that new, and before unheard of crimes, are discovered against the informer; that the royal mercy seems to relent, and that a new respite is sent to the prisoner; that time is taken, as the learned counsel for the crown has expressed it, to see whether mercy could be extended or not! that after that period of lingering deliberation passed a third respite is transmitted; that the unhappy captive himself feels the cheering hope of being restored to a family that he had adored, to a character that he had never stained, and to a country that he had ever loved; that you had seen his wife and children upon their knees, giving those tears to gratitude, which their locked and frozen hearts could not give to anguish and despair, and imploring the blessings of eternal providence upon his head, who had graciously spared the father, and restored him to his children; that you have seen the olive branch sent into his little arch, but no sign that the waters had subsided. "Alas! nor wife, nor children more shall he behold, nor friends, nor sacred home!" No seraph mercy unbars his dungeon, and leads him forth to light and life, but the minister of death hurries him to the scene of suffering and of shame; where, unmoved by the hostile array of artillery and armed men collected together, either to secure, or to insult, or to disturb him, he dies with a solemn declaration of his innocence, and utters his last breath in a prayer for the liberty of his country. Let me now ask you, if any of you had addressed the public ear upon so foul and monstrous a subject, in what language would you have conveyed the feelings of horror and indignation? Would you have stooped to the meanness of qualified complaint;—would you have been mean enough;—but I entreat your forgiveness—I do not think meanly of you; had I

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thought so meanly of you, I could not suffer my mind to commune with you as it has done; had I thought you that base and vile instrument, attuned by hope and by fear, into discord and falsehood, from whose vulgar string no groan of suffering could vibrate, no voice of integrity or honor could speak; let me honestly tell you, I should have scorned to fling my hand across it; I should have left it to a suttler minstrel; if I do not therefore grossly err in my opinion of you; I could use no language upon such a subject as this, that must not lag behind the rapidity of your feelings, and that would not disgrace those feelings, if it attempted to describe them.

Gentlemen I am not unconscious that the learned Counsel for the Crown seemed to address you with a confidence of a very different kind; he seemed to expect a kind and respectful sympathy from you with the feelings of the Castle, and the griefs of chided authority. Perhaps gentlemen he may know you better than I do; if he does he has spoken to you as he ought; he has been right in telling you, that if the reprobation of this writer is weak, it is because his genius could not make it stronger; he has been right in telling you that his language has not been braided and festooned as elegantly as it might; that he has not pinched the miserable plaits of his Phraseology, nor plaited his patches and feathers with that correctness of millinery which became so exalted a person. If you agree with him gentlemen of the Jury, if you think that the man who at the hazard of his own life, to rescue from the deep the drowned honor of his country, must not presume upon the guilty familiarity of plucking it up by the locks, I have no more to say; do a courteous thing. Upright and honest Jurors, find a civil and obliging verdict against the Printer! And when you have done so, march through the ranks of your fellow citizens to your own homes, and bear their looks as they pass along; retire to the bosom of your families and your children, and when you are presiding over the morality of the parental board tell those infants, who are to be the future men of Ireland, the history of this day. Form their young minds by your precepts and confirm those precepts by our own example; teach them how discreetly allegiance may be perjured on the table, or loyalty be foresworn in the Jury-box; and when you have done so, tell them the story of Orr; tell them of his captivity, of his children, of his crime, of his hopes, of his disappointments, of his courage and of his death; and when you find your little hearers hanging from your lips, when you see their eyes overflow with sympathy and sorrow, and their young hearts bursting with the pangs of anticipated orphanage, tell them that you had the bold-

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ness and the justice to stigmatize the monster—who had dared to publish the transaction! Gentlemen, I believe I told you before that the conduct of the viceroy was a small part indeed of the subject of this trial. If the vindication of his mere personal character had been as it ought to have been, the sole object of this prosecution, I should have felt the most respectful regret at seeing a person of his high consideration come forward in a court of public justice, in one and the same breath to admit the truth, and to demand the punishment of a publication like the presents to prevent the chance he might have had of such an accusation being disbelieved, and by a prosecution like this to give to the passing stricture of a newspaper, that life and body and action and reality, that proves it to all mankind and makes the record of it indelible. Even as it is I do own I feel the utmost concern that his name should have been soiled by being mixed in a question of which it is the mere pretext and scape-goat. Mr. Attorney was too wise to state to you the real question or the object which he wished to be answered by your verdict. Do you remember that he was pleased to say that this publication was a base and foul misrepresentation of the virtue and wisdom of the government, and a false and audacious statement to the world that the King's government in Ireland, was base enough to pay informers for taking away the lives of the people. When I heard this statement to-day; I doubted whether you were aware of its tendency or not. It is now necessary that I should explain it to you more at large.

You cannot be ignorant of the great conflict between prerogative and privilege which hath convulsed the country for the last fifteen years, when I say privilege you cannot suppose that I mean the privileges of the House of Commons, I mean the privileges of the people. You are no strangers to the various modes by which the people laboured to approach their object. Delegations, conventions, remonstrances, resolutions, petitions to the parliament, petitions to the throne. It might not be decorous in this place to state to you with any sharpness the various modes of resistance that were employed on the other side; but you all of you seem old enough to remember the variety of acts of parliament that have been made, by which the people were deprived, session after session, of what they had supposed to be the known and established fundamentals of the constitution; the right of public debate, the right of public petition, the right of bail, the right of trial, the right of arms for self-defence; until at last, even the relics of popular privilege became superseded by military force; the Press extinguished; and the State found its last entrenchment in the grave of the constitution. As little can you be strangers to the tremendous confederations of hundreds of thousands of our countrymen, of the nature and the objects of which

such a variety of opinions have been propagated and entertained.

The writer of this letter has presumed to censure the recall of Lord Fitzwilliam, as well as the measures of the present viceroy. Into this subject I do not enter; but you cannot yourselves forget that the conciliatory measures of the former noble lord had produced an almost miraculous unanimity in this country; and much do I regret and sure I am that it is not without pain you can reflect how unfortunately the conduct of his successor has terminated. His intentions might have been the best; I neither know them nor condemn them, but their terrible effects you cannot be blind to. Every new act of coercion has been followed by some new symptom of discontent, and every new attack provoked some new paroxysm of resentment or some new combination of resistance. In this deplorable state of affairs, convulsed and distracted within, and menaced by a most formidable enemy from without, it was thought that public safety might be found in union and conciliation, and repeated applications were made to the parliament of this kingdom for a calm enquiry into the complaints of the people; these applications were made in vain. Impressed by the same motives Mr. Fox brought the same subject before the Commons of England, and ventured to ascribe the perilous state of Ireland to the severity of its government. Even his stupendous abilities, excited by the liveliest sympathy with our sufferings and animated by the most ardent zeal to restore the strength with the union of the empire, were repeatedly exerted without success. The fact of discontent was denied; the fact of coercion was denied; and the consequence was the coercion became more implacable, and the discontent more threatening and irreconcilable. A similar application was made in the beginning of this session in the Lords of Great Britain by our illustrious countryman, of whom I do not wonder that my learned friend should have observed, how much virtue can fling pedigree into the shade; or how much the transient honour of a body inherited from Man, is obscured by the lustre of an intellect derived from God. He after being an eye-witness of this country presented the miserable picture of what he had seen; and to the astonishment of every man in Ireland, the existence of those facts was ventured to be denied; the conduct of the present viceroy was justified and applauded; and the necessity of continuing that conduct was insisted upon, as the only means of preserving the constitution, the peace and the prosperity of Ireland. The moment the learned Counsel had talked of this publication as a false statement of the conduct of the government, and the condition of the people, no man could be at a loss to see that that awful question which had been dismissed from the Commons of Ireland and from the

the Lords and Commons of Great Britain, is now brought forward to be tried by a sidewind, and in a collateral way by a criminal prosecution.

I tell you therefore, gentlemen, of the Jury, it is not with respect to Mr. Orr that your verdict is now sought; you are called upon on your oaths to say, that the government is wise and merciful, that the people are prosperous and happy, that military law ought to be continued, that the British Constitution could not with safety be restored to this country, and that the statements of a contrary import by your advocates in either country were libellous and false. I tell you these are the questions, and I ask you can you have the front to give the expected answer in the face of a community who know the country as well as you do. Let me ask you, how you could reconcile with such a verdict the goals, the tenders, the gibbets, the conflagrations, the murders, the Proclamations that we hear of every day in the streets, and see every day in the country? What are the processions of the learned Counsel himself Circuit after Circuit? Merciful God what is the state of Ireland, and where shall you find the wretched inhabitant of this land! You may find him perhaps in a goal, the only place of security, I had almost said, of habitation; you may see him flying by the conflagrations of his own dwelling; or you may find his bones bleaching on the green fields of his country; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests, less savage than his persecutors, that drift him to a returnless distance from his family and his home. And yet with these facts ringing in the ears, and staring in the face of the prosecutor, you are called upon to say, on your oaths, that these facts do not exist. You are called upon in defiance of shame, of truth, of honour to deny the sufferings under which you groan, and to flatter the persecution that tramples you under foot.

But the learned gentleman is further pleased to say that the traverser has charged the government with the encouragement of informers. This, gentlemen, is another small fact that you are to deny at the hazard of your souls, and upon the solemnity of your oaths. You are upon your oaths to say to the sinner country that the government of Ireland uses no such abominable instruments of destruction as informers. Let me ask you honestly what do you feel when in my hearing, when in the face of this audience you are called upon to give a verdict that every man of us, and every man of you, know by the testimony of your own eyes to be utterly and absolutely false? I speak not now of the public proclamation of informers with a promise of secrecy and of extravagant reward; I speak not of the fate of those horrid wretches who have been so often transferred from the

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table to the dock, and from the dock to the pillory; I speak of what your own eyes have seen day after day during the course of this Commission from the box where you are now sitting; the number of horrid miscreants who avowed upon their oaths that they had come from the very seat of government;—from the castle, where they had been worked upon by the fear of death and the hopes of compensation to give evidence against their fellows, that the mild and wholesome councils of this government are holden over these catacombs of living death, where the wretch that is buried a man, lies till his heart has time to fester and dissolve, and is then dug up as a witness.

Is this fancy, or is it fact? Have you not seen him after his resurrection from that tomb, after having been dug out of the region of death and corruption, make his appearance upon the table, the living image of life and of death, and the supreme arbiter of both? Have you not marked when he entered, how the stormy wave of the multitude retired at his approach? Have you not marked how the human heart bowed to the supremacy of his power, in the undissembled homage of deferential horror? How his glance, like the lightning of Heaven, seemed to rive the body of the accused, and mark it for the grave, while his voice warned the devoted wretch of woe and death; a death which no innocence can escape, no art elude, no force resist, no antidote prevent;—there was an antidote—a juror's oath—but even that adamant chain that bound the integrity of man to the throne of eternal justice, is solved and melted in the breath that issues from the informers mouth; conscience swings from her mooring, and the appalled and affrighted juror, consults his own safety, in the surrender of the victim:—

*Et quæ sibi quisque timebat,
Unius in miseri exitium conversa tulere.*

Gentlemen, I feel I must have tired your patience, but I have been forced into this length by the prosecutor who has thought fit to introduce those extraordinary topics and to bring a question of mere politics to trial under the form of a criminal prosecution. I cannot say I am surprised that this has been done, or that you should be solicited by the same inducements and from the same motives as if your verdict was a vote of approbation. I do not wonder that the government of Ireland should stand appalled at the state to which we are reduced. I wonder not they should start at the public voice, and labour to stifle or to contradict it. I wonder not that at this arduous crisis, when the very existence of the empire is at stake and when its strongest and most precious limb is not girt with the sword for battle, but pressed by the tourniquet for amputation; when they find the coldness of death already begun in those extremities
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where it never ends, that they are terrified at what they have done, and wish to say to the surviving parties of that empire, "they cannot say that we did it." I wonder not that they should consider this conduct as no immaterial question for a court of criminal jurisdiction, and wish anxiously as on an inquest of blood for the kind acquittal of a friendly jury. I wonder not they should wish to close the chaos they have opened by flinging you into the abyss. But trust me, my countrymen, you might persist in it, but you could not close it; trust me if it is yet possible to close it, it can be done only by truth and honour; Trust me that such an effect could no more be wrought by the sacrifice of a jury, than by the sacrifice of Orr. As a state measure the one would be as unwise and unavailing as the other; But while you are yet upon the brink, while you are yet visible, let me before we part remind you once more of your awful situation.—The law upon this subject gives you supreme dominion. Hope not for much assistance from his Lordship. On such occasions perhaps the duty of the Court is to be cold and neutral. I cannot but admire the dignity he has supported during this *trial*; I am grateful for his patience. But let me tell you it is not his province to fan the scared flame of patriotism in the Jury box; as he has borne with the little extravagancies of the law, do you bear with the little failings of the Press. Let me therefore remind you, that though the day may soon come when our orders shall be scattered before the winds of heaven, the memory of what you do cannot die; it will carry down to your posterity, your honour or your shame. In the presence and in the name of that ever living God, I do therefore conjure you to reflect that you have your characters, your consciences, that you have also the character, perhaps the ultimate destiny of your country in your hands. In that awful name, I do conjure you to have mercy upon your country and upon yourselves, and so to judge now, as you will hereafter be judged; and I do now submit the fate of my client, and of that country which we yet have, in common, to your disposal.

Mr. *Prime Serjeant*. Replied to Mr. *Curran*. He said it had become very difficult for him to answer the two very contradictory addresses which the counsel for the traverser had made to the Jury. It did not appear to him, that either of them had attended to the case of their client, but on the contrary that they seemed totally regardless of him. He observed at some length on the assertion of Mr. *Curran*, that the Jury had been collected by an officer of the Crown for the purpose of convicting the traverser. He subscribed most heartily to the panegyric paid to the honor and integrity every jury ought to possess, and which had been paid to the jury then in the box—he said that the duty of the counsel for the traverser and the counsel for the crown differed; he ought to make some excuse for the conduct of
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the former for departing from the duty they owed to their client, and he sincerely hoped the public would pardon them for it.

Mr. *Prime Serjeant* then observed at length on the libel, which he read paragraph by paragraph. He said many libellous attacks had been made upon the administration of justice in this country, and upon the government; but it was reserved for the traverser to make a desperate attack upon the temple of justice, profaning its very altars, and reviling its ministers.—Notwithstanding the traverser at the bar stood indicted for having printed and published the libel in the indictment, he firmly believed that the traverser was only an instrument in the hands of others. If it was necessary to look for an aggravation of the offence charged upon the traverser, it would be found in the support given him by his counsel, which had consisted of nothing else but the display and pomp of language. Mr. *Prime Serjeant* then made a few observations on the nature of the offence with which the traverser stood charged, and said if the jury were of his opinion, it was both a false, scandalous and seditious libel, and they ought to find him guilty: if, on the contrary, they did not believe that, then in that case they ought to find him not guilty.

Mr. *Justice Downes* charged the jury, he observed that they had been amused by a display of eloquence from the counsel for the traverser, running wide of the matter before them. He would however endeavour to point out to them the object for their consideration, divested of all irrelevant matter. His Lordship then stated to the jury the libel, as it appeared on the record, and said that the question which would be for their consideration would be, whether the traverser at the bar was the printer and publisher of the matter called a libel, and to find the intent with which he published it; and if the jury found that the traverser had published the paper called a libel, they were then to enquire whether the innuendoes had been well laid, and properly applied in the indictment, and whether it bears the construction imputed to it by the innuendoes; and if the jury were of opinion that the traverser published it, and that it was a libel, and that the innuendoes had been well laid and properly applied, there could be no doubt on the whole of the case, but that the jury ought to find the traverser guilty.

It was for the jury, his Lordship said, to consider well the evidence, and for them also to consider if it carried the force of conviction to their minds, and to consider whether with the evidence, as connected by *Major Sirr*, (which his Lordship repeated) they had any rational doubt on their minds, that

that the traverser was the publisher of that paper, called a libel. On this point, his Lordship said, he was not to give a positive opinion, but he left it entirely to the jury, and if they were of opinion, that he the traverser did publish the letter, then their duty was to see if it was a libel or not.

His Lordship then stated the act of parliament to the jury, for securing the Liberty of the Press, by which act, is left to the jury, the final decision of the question, whether the publication be a libel or not; and at the same time, provides that the Judge shall give his opinion to the jury, whether it is in his mind a libel.

The act of parliament having given to the Judge this power, his Lordship said he would state to the jury his opinion upon the publication, and it was for them to follow or reject that opinion. In the execution of that duty, he would say to them, that a paper which reflects on the administration of the justice of the country, as the paper before them appeared to do; that a paper which leads to degrade the administration of justice in the eyes of the people, which in his opinion, the paper before the jury did, was a libel. If the jury were of opinion that the publication called the execution of a criminal in due course of law, murder, let the jury judge for themselves, if that was not a libel, his opinion was, that such a charge was a libel. Was not to charge a jury, which had brought in a verdict of guilty against a criminal, with having been beastly drunk, a libel? In his opinion it was. Another offence charged, is, that if the criminal had committed the fact, for which he suffered, it was no crime, but a meritorious act. With what view could that paper have been written? If upon the whole of the evidence, the jury believed that the charge in the indictment states it true, when it says that the libel was printed with a view of devising, contriving, and falsely, maliciously, and seditiously intending, &c. then the charge would be fully established.

There had been no evidence given to shew that the publication was innocent. It was not necessary for the counsel for the prosecution to shew another intent of the printer and publisher, than what appeared on the face of the paper itself; and if the jury can feel that the intention of the paper, was to state a false, seditious, and malicious libel, it would be sufficient to ground their verdict of guilty. His Lordship said he took this to be the established law.

His Lordship said he had rejected evidence of the truth to be given, because it had been the established law that the truth or falsehood of a libel was immaterial. At the very

time the Libel-bill was going through the house in England, from which the present bill is copied, various questions were put to the judges of England, whether on a trial on an information or indictment for a libel, the truth or falsehood was material. The judges were of opinion that it was not. This opinion was grounded upon a very sound reason—it would be trying a man who was not present, which would be totally inconsistent with the spirit of justice. Another reason why his lordship would not admit the evidence of the truth was, the libel was against the administration of the country; and the court in which he sat had no authority, and was not competent to try the conduct of government—the court of Parliament was the only court in which that could be brought forward.

His lordship then said that if the jury did believe that *malice* directed the publication and writing of that paper termed a libel, it would be for them to consider whether they would adopt the opinion he had given them upon the matter contained in it or not; but that if they had any rational doubt that the paper was not published with a malicious purpose, they ought to acquit him.

The jury retired for a short time, and then brought in a verdict—GUILTY.

Counsel for the Prosecution.

Messrs. Attorney General,
Prime Serjeant,
Solicitor General,
Ridgeway,
Townsend—and
Worthington.
Agent, Mr. Kemmis.

Counsel for the Traveller.

Messrs. Curran,
Fletcher,
Mac Nally,
Sampson,
Sheares—and
Orr.
Agent, Mr. M. Dowling.

The affidavits mentioned in this trial, to have been made by the Jurors, who tried Mr. Orr, are to be found annexed to that gentleman's trial.

SATURDAY,

SATURDAY, DECEMBER 23.

This day, Mr. Finerty was brought up to receive sentence. On his being put to the bar, he addressed the Judge as follows:

MY LORD,

From the very able defence which has been made for me, I should think it utterly unnecessary to trouble your Lordship with any observations of mine, if the language of Mr. Prime Serjeant, in his address to the Jury, had had not imperiously demanded some reply. It may accord well with the general system of our government, to inflict a severe punishment upon me; but what end it can answer, to defame and abuse my character, I am at a loss to discover. Among the epithets which the learned Council so liberally dealt out against me, he was pleased to call me "the tool of a party." However humble I may be, my Lord, I should spurn the idea of becoming the instrument of any party, or any man—I was influenced solely by my own sense of the situation of the country, and have uniformly acted from that feeling of patriotism, which I hope it is not yet considered criminal to indulge; and I trust the general conduct of the PRESS, has fully evinced to the People, that its object was truth and the good of the nation, unconnected with the views, or unwarped by the prejudices of any party.

If I would stoop, my Lord, to become the tool of a party, I might have easily released myself from prosecution and reward; and this would have been clearly illustrated if your Lordship had suffered the persons summoned on my trial to be examined.

I have been now, my Lord, eight weeks in confinement, during which I have experienced the severest rigours of a jail—the offence was bailable, but it became impossible for me, from the humility of my connections, to procure bail to the amount demanded; probably had any person stood forward, he would have been *marked*; and sensible of that, I preferred imprisonment to the exposure of a friend to danger.—But not contented with my imprisonment and persecution, it seemed the intention of some of the Agents of government to render me infamous. For this purpose, my Lord, about three weeks since, I was taken from Newgate, which ought at least to have been a place of security to me, at seven o'clock in the evening, by what authority of law I know not, to Alderman Alexander's office; and it was there proposed to me to surrender the different gentlemen who had favoured the PRESS with their productions, parti-

cularly the author of *MARCUS*. Every artifice of hope and fear was held out to me. After a variety of interrogations, and after detaining me there until two o'clock in the morning, I was dispatched to Kilmainham under an escort, where being refused admittance, I was returned to Newgate—from whence, about eleven o'clock on the same day, I was again taken to Alderman Alexander's, where I underwent a similar scrutiny, until three o'clock, when the Alderman left me, as he said, to go to Secretary Cooke, to know from him how he would wish to dispose of me, or if he desired to ask me any questions. At eight in the evening, the Alderman, for whom I was obliged to wait, was pleased to write to one of his officers to have me remanded to prison. In the course of this extraordinary inquisition, my Lord, I was threatened with a species of punishment, to a man educated as I have been in principles of virtue, and honesty, and manly pride, more terrible than death—a punishment, my Lord, which I am too proud to name, and which, were it now to make part of my sentence, I fear, although I hope I am no coward, I should not be able to persuade myself to live to meet. By what authority any man could presume to prejudge your Lordship's sentence, or anticipate the verdict of a Jury, it is not for me to decide. I cannot conceive what sort of solicitude these men entertain for the dignity of the Irish character, or the honor of the government, who thus endeavour to stain it by the multiplication of informers. It may be answered, my Lord, that informers are useful—so is the office of common hang-man; but will any man of common honesty, or common sense, imitate the conduct, or plead for the character of either, particularly in a time when so many instances of profligacy have appeared amongst that class?

With respect to the publication, my Lord, which the Jury has pronounced a libel, the language of which it undoubtedly in some instances exceptionable, it was received in the letter-box by my clerk, who generally went to the office earlier than I, and taking it to the Printing-office, it was inserted, and the whole impression of the paper worked off before I saw it; but on remonstrating with the author, he produced to me such documents as put the truth of the statement beyond question; and these documents, my Lord, were yesterday in Court, and would, combined with the testimony of the witnesses present, if your Lordship had permitted their examination, have amply satisfied the Jury of the facts. And heretofore, my Lord, I have been taught to think that truth was above all things important, and I never did believe it possible that truth and falsehood were in any instance equally guilty, or that the truth, though it might not altogether acquit, would not so much as
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extenuate ; for if it would in any degree extenuate the offence, I suppose your Lordship would have thought it necessary that it should be heard, and I of consequence conceived the publication of Marcus's letter not alone innocent but praiseworthy, even though it did contain passages which I do not vindicate ; but your Lordship's opinion and the verdict of the Jury teaches a different lesson, and may serve to regulate my conduct in future.

I hope your Lordship will take the several circumstances I have stated into consideration—if guilt my Lord, consists in the mind, I solemnly assure you that I have examined my heart, and find that it perfectly absolves me from any criminality of intention ; I have only then to inform your Lordship that a heavy fine would be tantamount to perpetual imprisonment, and long imprisonment little short of death ; yet whatever punishment you may please to inflict, I trust I have sufficient fortitude arising from my sense of religion, and of the sacred cause for which I suffer, to enable me to bear it with resignation.

Mr. *Justice Downes*, then proceeded to pass sentence upon the prisoner.

He told the prisoner he had listened to him with patience, that nothing had fallen from him to induce a mitigation of punishment, except what he had stated of the length of time he had been in confinement, which he would not forget in the sentence ; as the time of the imprisonment should commence from the day of the arrest. That with respect to the libel having been published without his immediate knowledge, if this were an excuse, which it was not, no evidence of the fact had been laid before the Jury.

Mr. *Justice Downes*, then continued : Sir, in scornfully declaring that guilt or infamy was attached to assisting the discovery of guilt, you have affected a false spirit ; and you have proved that the government would have afforded you mercy, which your libel asserted it was not in their nature to give. You say there were documents which would have substantiated the facts. It would be monstrous indeed, that a Printer should take upon him to determine, what were sufficient documents to justify his censure of the government. The publication is a most atrocious libel on the administration of justice in all its branches. If the verdict had been as you have stated, and that the learned Judge had reason to suppose, that it was the result of perjury and intoxication, he would from his nature, have delighted in recommending the unfortunate man as an object of mercy ; and surely such recommendation would

would have been attended to. Your libel says, these facts were true, and that the Lord Lieutenant was acquainted with them. It is impossible if they were true, and that they had come to the knowledge of the chief Governor, and that the person was a proper object of mercy, pardon would not have followed, for there is no man whose heart is so steeled against mercy and humanity, as to have refused it.

It also says, "if Mr. Orr was guilty what was his crime? It was administering an oath of love and charity. If it was an "oath of extermination he would have found mercy." What? say to it was no crime the administering an unlawful oath when from such oaths the present unfortunate state of the country springs? It was an oath binding the taker to be a member of a society formed for seditious purposes, whose end has on many occasions appeared in evidence subversive of order, and promoting an attachment to the enemies of the country. Your sentence is, "That you be imprisoned for two years from the day of your arrest, that you stand in the pillory for one hour, pay a fine of 20l. and at the expiration of your confinement give security yourself in 500l. and two sureties in 250l. each for your good behaviour for seven years.

SATURDAY, 30.

This day Mr. Peter Finerty pursuant to his sentence, stood one hour in the pillory opposite to the Session house, in Green-street. An immense concourse of people attended this exhibition. Mr. Finerty was accompanied by some most respectable citizens. He appeared contented and resigned, and upon being released from the restraint of this governmental engine for *securing the Liberty of the Press*, he addressed the spectators in a few words—"My friends, you see how cheerfully I can suffer; I can suffer any thing provided it promotes the liberty of my country." Upon this the spectators applauded by clapping of hands, the most marked silence having prevailed until then. Some of the guard who attended being, we suppose, the *picked-men* of the Armagh Militia, attacked the unarmed people. Some of the Officers also were guilty of similar conduct; others, both officers and privates, acted like gentlemen and soldiers. Sheriff Pasley on this occasion conducted himself with perfect propriety. The conduct of the people was peaceable and exemplary. x

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